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# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 28 April 1993

Standing committee on on the Ombudsman

Organization

Chair: Mark Morrow Clerk: Franco Carrozza Assemblée législative de l'Ontario

Troisième session, 35e législature

# Journal des débats (Hansard)

Mercredi 28 avril 1993

Comité permanent de l'ombudsman

Organisation



Président : Mark Morrow Greffier : Franco Carrozza

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## Table of contents

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# STANDING COMMITTEE ON THE OMBUDSMAN

# Wednesday 28 April 1993

The committee met at 1104 in room 151.

#### **ELECTION OF CHAIR**

Clerk of the Committee (Mr Franco Carrozza): Good morning. I am the clerk. I shall be following through with the election of the Chairman. I call upon you to nominate a member for the Chair.

Ms Zanana L. Akande (St Andrew-St Patrick): I nominate Mark Morrow for Chair.

Clerk of the Committee: Are there any other nominations? There being no other nominations, I call upon Mr Mark Morrow to take the chair as the Chairman.

The Chair (Mr Mark Morrow): Thank you very much. I believe this is our third year as the committee of the Office of the Ombudsman.

## **ELECTION OF VICE-CHAIR**

**The Chair:** I'm now going to move into elections for Vice-Chair. I now open the floor for nominations.

**Mr Donald Abel (Wentworth North):** I'd like to nominate Tony Rizzo in absentia.

The Chair: Tony Rizzo. Any further nominations?

Mr Robert V. Callahan (Brampton South): Do you really mean that? Do you want further nominations? No.

**The Chair:** By all means, if you have one. Seeing no further nominations, I declare nominations closed, and I also declare Tony Rizzo elected.

Moving on to the third business on the agenda—

Mr Callahan: Just on that last point, Mr Chairman, I think people watching this process should be well aware of the fact that this is all done in advance. I find it objectionable in an Ombudsman's committee, where the Ombudsman is the court of last resort for those people who have been impaled by the particular government of the day, of whatever political stripe.

I find it interesting that when it comes time to appoint the Chair or the Vice-Chair, and the clerk has to go through this charade of saying, "Are there any other nominations?" the public out there viewing this, and again keeping in mind that this is the Ombudsman's committee—I mean, I find this to be a sacrosanct committee. The sham down here in terms of the procedure doesn't allow for a second nominee to be made for Chair or Vice-Chair. Somehow that flies totally in the face of democracy. It flies totally in the face of a government that says it's democratic. It also, I suggest, has a good deal to do with what really is wrong with this place.

Ms Christel Haeck (St Catharines-Brock): Point of

order.

**The Chair:** He's on a point of order.

Ms Haeck: Well, I can interrupt with another point of order.

Interjection.

Mr Callahan: What is really wrong with this place is that the structure of it is so—"pre-arranged" is the best word I can use, the kindest word I can use. It's time that there be reform in this place, that true democracy reign and that people can in fact nominate the best candidate. I'm not suggesting, Mr Chairman, you're not the best candidate or that the Vice-Chair is not, but I think the taxpayers demand that of us. They no longer want these little concepts that were created in the past; they want something more open. They want to see a committee Chair not pre-arranged by the government, and none of these arrangements made whereby no other person could run for committee Chair or Vice-Chair.

We don't want to see any more kerfuffles like yesterday, where Mr Kormos—what was it, resources development—was denied the opportunity, even in this fixed arrangement, the right to be the Chairman of that committee. That, to me, makes us, all of us collectively, as politicians, look pretty silly down here. I really think that maybe one of the committees, maybe Legislative Assembly or maybe even the Ombudsman's committee, should really look deeply at the question of reform of this place. Somebody has got to look at it, because I think that the time and effort that was spent yesterday—there was an entire day in a committee and there was an entire day in the House where people in the opposition had to plead and try to educate the public in terms of how unfair that whole process was.

Think of the money that was spent in doing that when people's public business should have been conducted. It was done, I think, for a very good reason, because it had to be done. It was totally undemocratic what had happened to Mr Kormos in terms of his appointment as Chairman. Yet it took up a full day that would have been available for legislative business and for the benefit of the taxpayers. That's what this whole thing did. So I think someone's going to have to take a look at this, because it can't happen again. I think the public out there demand more of us, and I think it's got to happen.

#### 1110

The Chair: Just before I move to the next point of order, Mr Callahan, you will notice that when the Chair called for nominations for Vice-Chair, I asked for further nominations, and there were none. If you also

look in our report on the Ombudsman, we are asking for a bit of reform on this committee, recommendation 42, I believe. Ms Haeck, please.

Ms Haeck: I always find it interesting to get into these discussions because some folks do cling a lot to tradition. I don't necessarily happen to be one of them, but there are some procedures that do follow through in this House. Obviously, I would hope that Mr Callahan would concede that when an opposition Chair is the order of the day, the selection process is exactly the same as what is done here, so for him to somehow assert that this is an extraordinary process that somehow deviates from democracy or practice I think is, shall we say, the pot calling the kettle black, and at that point—

**Mr Callahan:** I'll have to rise to the occasion for that one, Mrs Haeck.

**Ms Haeck:** No, I really think the debate is over and I'd adjourn, if we may.

The Chair: You've answered the point, Ms Haeck.

**Mr Callahan:** I'd like to address that point of order as well, Mr Chairman.

**Ms Haeck:** I don't know that a motion to adjourn is debatable.

**Mr Callahan:** There's a point of order on the floor.

**The Chair:** There is a motion to adjourn.

**Mr Callahan:** I don't think she can call that motion, with all due respect, until the point of order has been dealt with.

Ms Haeck: No, I called it actually after I finished my point of order.

Mr Callahan: That's terribly democratic of you, Mrs Haeck, but that's not what you can do. I would suggest that—

**Ms Haeck:** I think under the circumstances it's as good as anything that you guys do.

**Mr Callahan:** —there is a further point of order. I raised a further point of order.

**The Chair:** Excuse me, please. There was a motion on the floor, before your point of order, to adjourn. A motion to adjourn is non-debatable. All those in favour of adjourning, please indicate.

Mr Callahan: You're all alone, I guess.

Ms Haeck: That's fine. It's the democratic way.

**The Chair:** All those opposed? Thank you very much. Motion defeated.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair:** Now, can we please move to item 3, a motion to establish a subcommittee on business of this committee? Can I have a motion to establish one, please?

Mr Frank Miclash (Kenora): I so move a motion to establish a subcommittee.

The Chair: Mr Miclash, thank you very much.

Okay, can we now please name the individuals to the committee, one from each caucus.

Mr Miclash: I nominate Dave Ramsay.

**Mr Bill Murdoch (Grey):** Do you want to nominate me?

**Mr Callahan:** Sure, I'll nominate Crash—sorry; Bill Murdoch.

Ms Akande: Mr Rizzo.

The Chair: Okay, thank you very much.

Now, all those in favour of the people on the subcommittee, please indicate. Thank you very much. Opposed? Carried.

#### COMMITTEE BUDGET

The Chair: Item 4: We now have to give some direction to our clerk to establish a budget for the 1993-94 year. I think what the clerk is looking for here is just a motion on the floor to allow him to prepare a budget. Can I have a motion, please?

Interjection.

**The Chair:** Thank you very much. Any discussion on that motion? Seeing none, all those in favour? Opposed? Seeing none, carried.

#### **AUSTRALIAN COMMITTEE**

The Chair: If you all move to the third letter in your package, we have a joint committee that will be here from Australia. It's in October. I gather this is just for a point of information at this point.

Clerk of the Committee: Could I clarify?

The Chair: The clerk has asked to clarify the situation.

Clerk of the Committee: The committee would like to come. They are on their tour. One of the stops will be in Toronto. They would like to meet with the committee and discuss some points that they are reviewing. We have finished our review. They would like to meet with us. The new date will be some time in October, and that is when the Legislature is meeting in Ontario and we are meeting, so if it's agreeable, we'll try to arrange a meeting between the two committees during our own meeting on Wednesday morning.

Ms Akande: I think that's wonderful.

**The Chair:** Are we all then in agreement? Do I need a motion from the floor?

Clerk of the Committee: Agreement will be fine.

The Chair: Agreement?

**Mr Murdoch:** We couldn't hear, but that's all right. I'm sure it must be all right; Margaret here is smiling.

The Chair: That chainsaw is fairly loud outside.

## COMMITTEE REPORT

The Chair: Okay, the next item of business is a discussion on a proposal to request from the House leaders that a date be set so that we can debate our report in the House on the Office of the Ombudsman.

Can we go ahead and ask the three House leaders for a possible date where we can put our report into the House to get it debated? Can I have a motion to that extent, please?

**Mr David Ramsay (Timiskaming):** I will move a motion that we request of all three House leaders that a date be set so that a review of the Office of the Ombudsman may be debated in the Legislature.

The Chair: Is there any discussion on the motion? Seeing none, all those in favour of the motion? All opposed? Seeing none, carried.

Item 7 on our agenda is any other business. Is there any other business before this committee?

Ms Akande: I don't know whether I have to bring it to the committee, and obviously nobody can hear what I'm saying anyway, especially now, but I understand that—I missed the last meeting of the Ombudsman committee—there was some response from the Ombudsman to our committee report. May I have that? I didn't receive it.

Clerk of the Committee: The only letter I have received—it's in your package—is from the Ombudsman and is a response to Mr Drainville's question of the Ombudsman. I personally have not received any response regarding the report.

**Ms Akande:** Can I have a copy of that, please? Oh, it's here. Okay.

**The Chair:** Ms Akande, at this time, as far as I'm aware, talking with the clerk, there has been no official response to the report.

Ms Akande: Okay, thank you.

**The Chair:** Is there any other business before the committee?

**Mr Dennis Drainville (Victoria-Haliburton):** I would wish to move that the committee do now adjourn.

**The Chair:** This committee stands adjourned until the call of the Chair.

The committee adjourned at 1117.





# **CONTENTS**

# Wednesday 28 April 1993

Election of Chair
Election of Vice-Chair B-
Appointment of subcommittee
Committee budget
Australian committee
Committee report

# STANDING COMMITTEE ON THE OMBUDSMAN

\*Chair / Président: Morrow, Mark (Wentworth East/-Est ND) Vice-Chair / Vice-Président: Rizzo, Tony (Oakwood ND)

\*Abel, Donald (Wentworth North/-Nord ND)

\*Akande, Zanana L. (St Andrew-St Patrick ND)

\*Drainville, Dennis (Victoria-Haliburton ND)

Henderson, D. James (Etobicoke-Humber L)

\*Martin, Tony (Sault Ste Marie ND)

\*Miclash, Frank (Kenora L)

\*Murdoch, Bill (Grey PC)

\*Ramsay, David (Timiskaming L)

Stockwell, Chris (Etobicoke West/-Ouest PC)

Wilson, Gary (Kingston and The Islands/Kingston et Les Îles ND)

# Substitutions present/ Membres remplaçants présents:

Callahan, Robert V. (Brampton South/-Sud L) for Mr Henderson Haeck, Christel (St Catharines-Brock ND) for Mr Wilson

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Murray, Paul, committee counsel and research officer, Legislative Research Service

<sup>\*</sup>In attendance / présents

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# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 19 May 1993

Standing committee on the Ombudsman

Organization

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# Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

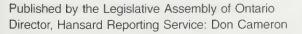
Mercredi 19 mai 1993

Comité permanent de l'ombudsman

Organisation



Président : Mark Morrow Greffier : Franco Carrozza







#### Coat of arms

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# STANDING COMMITTEE ON THE OMBUDSMAN

# Wednesday 19 May 1993

The committee met at 1018 in room 151.

The Chair (Mr Mark Morrow): Can I call this to order, please? I'd like to welcome everybody here. I'm Mark Morrow, chairperson of the standing committee on the Ombudsman. I understand we have a point of order before we start.

Mr Dennis Drainville (Victoria-Haliburton): Thank you, Mr Chair. Just on a point of order—really a clarification for the committee—by an unfortunate situation on the part of the government, I sit on this committee presently. I'm an independent member. The government put me on this committee as a member of the government. At that time I was a member of the government. It is, I think, difficult for the government in the sense that by having me on the committee at this point it doesn't have a full majority, but I do want to say that I am an independent member and this is really a non-partial committee. We tend to look at these issues on the basis of the needs of the people of Ontario and their responsibilities to and their relationship to the Ombudsman.

So I just want to clarify and make sure that it is clear to the members of the committee and to those who are watching that as an independent member I will be attempting to continue in the spirit of this committee, which is a non-partisan spirit, and I will endeavour to do my best to serve the interests of the whole of the committee. I will be attempting to work on this committee as a member of the committee in an independent capacity.

The Chair: Thank you, Mr Drainville. Although you asked for a point of order, that's a point of information, for members only. But thank you very much for clarifying that.

#### SUBCOMMITTEE REPORT

**The Chair:** Turning to the agenda, item number 1: To consider the report of the subcommittee on business. Any questions and/or comments about the subreport?

Mr Chris Stockwell (Etobicoke West): Where is this?

Clerk of the Committee (Mr Franco Carrozza): It would be on your right-hand side, just below the yellow sheet.

Mr Derek Fletcher (Guelph): So moved.

Ms Sharon Murdock (Sudbury): Seconded.

**The Chair:** Any questions or comments on the report? The report is moved and seconded. All those in favour? Opposed? None. Carried.

### **COMMITTEE BUDGET**

The Chair: Item number 2: to consider the 1993-94 budget. Any questions and/or comments? The clerk at this point will answer any questions or comments on the budget. Are there any? Mr Rizzo.

**Mr Tony Rizzo (Oakwood):** Can I ask, how much was the budget for last year?

Clerk of the Committee: Last year the estimate of the committee was \$58,000.

Mr Rizzo: This was the estimate. What was the actual?

**Clerk of the Committee:** The actual spent was \$23,000.

If I may make a point, the translation for the report which we completed, that is, that particular cost, should be accrued to last year's, but because the year was over, we put it in this budget. In actuality, what you have here would be \$60,000 minus \$15,000.

**Mr Stockwell:** The per diems for summer and winter meetings in 1993-94: Does this committee meet in the summer and winter?

**Clerk of the Committee:** Yes. We met last year for the public hearings on the review of the Ombudsman for two weeks.

Mr Stockwell: That was it?

Clerk of the Committee: That was it last year, yes. Mr Stockwell: How about generally? Does it meet?

**Clerk of the Committee:** We meet regularly one week a year to review the Ombudsman's annual report or denied cases that are part of the annual report of the Ombudsman.

Ms Zanana L. Akande (St Andrew-St Patrick): I'll move to specifics within this budget, but what I wanted to ask in a general way was, you say that last year the budget was \$58,000. Am I correct?

Clerk of the Committee: Estimated \$58,000.

Ms Akande: And the actual spent was \$23,000.

Clerk of the Committee: That's correct.

Ms Akande: My memory isn't all that great, but it seems to be on the basis—this year's budget is similar to last year's in terms of the items that are within it. Why are we continuing to budget far beyond what seemed to have been necessary last year? I mean, that's considerably more. It's more than twice as much as was actually used.

Clerk of the Committee: As I explained, the \$15,000 for this year should have been paid last year.

Also included as part of the printing cost is the annual report for last year, so the annual report last year cost us \$2,800.

Ms Akande: So what you're saying is that we're including the \$15,000 and the \$2,800, which is \$17,800.

Clerk of the Committee: That's right.

Ms Akande: You're including it, and that would be projected on top of the \$23,000 that was actually spent last year. Right?

Clerk of the Committee: That's correct.

**Ms Akande:** So that would be like \$40,000, unless my math is even worse than I thought. Even still, it's in excess, considerably in excess. Is that generally the considered margin?

Clerk of the Committee: Yes.

Ms Akande: Okay.

**Ms Murdock:** On the same point, is it common for the review of the year before to be on? In other words, are we always in arrears or is it just for last year?

**Clerk of the Committee:** No, just for last year. We usually complete our annual report in December, and for a number of reasons the annual report carried over into the spring and we had to include it in this particular budget.

**Ms Murdock:** Okay. Secondly, in terms of the printing for the \$15,000 cost, where did you have it done?

**Clerk of the Committee:** We do use Government Services to print—

Ms Murdock: The MGS?
Clerk of the Committee: Yes.

**Ms Murdock:** So you didn't use supply and services?

**Clerk of the Committee:** We go through our supply and services to contract the government's printing office. We do not go outside.

**Ms Murdock:** Okay. I'll have a talk with you later. The other question I have is on the gifts. Gifts for what? I know it's only a \$200 figure, but gifts for what?

Clerk of the Committee: For when guests come and visit the committee. My understanding is that there would probably be an Australian committee visiting us in October. If the committee wishes to provide them with some sort of gift representing Ontario, we usually give them a loon or something like that.

**Ms Akande:** So we don't just give them the trillium pin?

**Ms Murdock:** In other words, we buy them here from our Legislative gift shop and we have to pay for them? It isn't provided by the Speaker's office or anything like that?

Clerk of the Committee: Unless they're invited by

the Speaker. Then he has the separate funds for that.

The Chair: Thank you, Ms Murdock. Mr Drainville?

Mr Drainville: I thought I would just sort of add to the response. In terms of the budget, we also budget for two periods of time when we meet in between sittings, and I believe our last sitting we didn't sit very long. In fact, I think it was maybe one day, was it not, the last sitting? We just sat for one day instead of the whole period of time. But we still have to budget for the whole period of time, you see, and that's why you end up with sometimes more money than it appears.

The Chair: Thank you, Mr Drainville. Mr Stockwell, please.

Mr Stockwell: Maybe a couple of comments before we go ahead. Frankly, I think from the review of this committee and what I've seen that it does, it appears to be a colossal waste of money. I think Mr Mahoney's motion is probably a reasonable motion, and I'd support it if it came to a vote in the Legislature, so you can tell where I'm coming from with respect to maintaining this committee.

On the budget itself, we have per diems for members, and I look across the room and I see the Deputy Speaker and I see parliamentary assistants. Do they all qualify for per diems as well?

Clerk of the Committee: Any member who appears before this committee when the House is not in session is entitled to per diems in accordance to the legislative act

**Mr Stockwell:** So in essence there would be parliamentary assistants' salaries, or Deputy Speaker's salary, and per diems paid to members.

Clerk of the Committee: Yes, if they—

Mr Stockwell: I didn't know that.

**Mr Drainville:** Welcome to the Legislature.

Mr Stockwell: Yes. I mean, that's why I think—

Ms Murdock: You don't sit on committees very often.

Mr Stockwell: Well, no. I know that comments were made by the member for Sudbury, but I honestly thought that once you were a parliamentary assistant, that was your amount of money you received, and sitting on committees was not—

Mr George Mammoliti (Yorkview): It's a different job altogether.

Mr Stockwell: I'm getting advice across the room. But what I understood was that the parliamentary assistant's salary was X and that was it. You sat on committees of your own free will. So I will say, and I'm learning very quickly, that they do nothing of their own free will. So I would move that we strike the per diems, Mr Speaker, off this committee.

Interjections.

The Chair: Mr Stockwell, just before I do ask—

**Mr Stockwell:** I'm getting a lot of advice again, so I'm trying to hear the Chairman.

The Chair: Mr Stockwell, thank you. Just before I ask the clerk to clarify, let it be known that I am opposed to per diems also, but as you know, the per diems have been in place since 1990, and if you have sat on any committees you would know that.

Ms Murdock: Long before 1990.

**The Chair:** It is long before 1990, but what I'm saying is that since this was struck, it was here. I would like the clerk to clarify, please.

**Clerk of the Committee:** To clarify, Mr Stockwell, the per diems are placed in this budget in accordance to the Legislative Assembly Act.

Mr Stockwell: I'm having a difficult time hearing you, sir.

Clerk of the Committee: Sorry?

**Mr Stockwell:** I'm having a tough time hearing you.

Clerk of the Committee: The reason we place the allowances, per diems, in the budget is that the members are entitled to those in accordance to the section of the legislative act. The members, however, have the choice of claiming them or not to claim them, so that is the reason why I, as clerk, place these expenditures in accordance to the legislative act.

Mr Stockwell: Can we as a committee vote to strike the per diems from our own budget?

Clerk of the Committee: I suppose you could do that, sir. However, it's not binding upon a member if he or she wishes to claim these.

**Mr Stockwell:** Okay, but the question stands that if there's no line item in the budget, no moneys approved in the committee, where do they claim it from?

**Clerk of the Committee:** Well, they can claim it, sir. Then what the committee would need to do is place a supplementary budget before the Board of Internal Economy for those expenditures.

1030

**Mr Stockwell:** I'd be prepared to do that then. I think that's reasonable.

**Mr Frank Miclash (Kenora):** I think you'd have to look at someone who is not a PA.

Mr Stockwell: I understand what you're saying and I'm not directing this just at the parliamentary assistants or Deputy Speaker or so on and so forth. Maybe you're right, maybe you have to look at those people who don't receive stipends over and above their standard member of Parliament salary. I guess what I'm driving at is, I have sat on committees, I have not collected my per diem, I don't think it's a reasonable thing to do.

If it means we've got to catch everybody in the same net, I will do that, but I think it's more unreasonable that per diems are paid to people whether they're caucus chairs of other parties or whips or deputy whips or parliamentary assistants or deputy chairs of committees, that they would then receive a per diem over and above that other stipend they receive.

It seems to me as I look about the room, the only two in this room who I think would be affected would be the two Conservative members, because I don't think either Bill or myself receive any extra. I'm not sure but I think you're—

Mr Miclash: The deputy whip.

Mr Stockwell: —the deputy whip. I don't think we receive any extra moneys to do this job and I myself am prepared to forgo that as long as everyone would agree to forgo it. I think it's reasonable considering the times and the taxes that are going to come down today, tax hikes, considering everyone's making \$5,000, \$10,000 extra. The stipend is a give, and I think that it's reasonable to give up.

**The Chair:** Mr Stockwell, I would say that you're contrary to the standing orders and therefore—

**Mr Stockwell:** It's not the first time I've been contrary—

**The Chair:** —I would have to rule your motion out of order. If you have a problem with the standing orders—

**Mr Stockwell:** No. I guess I want to clarify what my motion is. I'm not making a motion that is contrary to standing orders. I'm making a motion that we strike the per diem from the budget. That is not contrary to standing orders.

Clerk of the Committee: But it's contrary to the act.

The Chair: It's still contrary to the legislative act and I would need unanimous consent to do that.

Mr Stockwell: With all due respect, Mr Chair, I just want to clarify this motion and I'll pass to Mr Murdoch in a moment. This budget is before us to be approved, as I understand it. I understand the standing orders and I understand the approval process. All I'm suggesting is that I am moving an amendment to this budget.

To move amendments to this budget is not contrary to any standing order. All I'm asking is that we move an amendment to the budget. If any member wants to put in a per diem, they still are allowed to put in the per diem, but this committee will have to go to the Board of Internal Economy and get supplementary approval. That's what I'm saying, and I don't think that's contrary, with all due respect.

**The Chair:** On Mr Stockwell's amendments, are there questions and/or comments?

Mr Bill Murdoch (Grey): Yes. What I was just wondering, and now that you've ruled it in, I guess it doesn't matter—

The Chair: I haven't ruled it in.

**Mr Murdoch:** Okay. I was going to suggest, Chris, that you may want to bring in a private member's bill on all committee members. I don't know why you would pick on this one. There are the other committees. The same rules apply. The other committees are probably passing their budgets with their per diem days in it. Maybe it would be better to bring in a private member's bill. I have one coming up on June 16, if you want it.

Mr Stockwell: I'd be prepared to do that.

**Mr Murdoch:** That may be the way to do it, if Chris wants to do that, and that would then, if the bill was passed, solve the problem. Chris could bring in a private member's bill.

**Mr Stockwell:** I'd be prepared to do that, but my motion still stands.

**Mr Murdoch:** Okay. That's fine, and we'll vote on it here.

The Chair: Thank you, Mr Murdoch.

Mr Murdoch: I was just trying to solve the problem, but Chris wants to keep his motion on. I'm not going to object to it if that's what he wants to do, but I'm saying that he could bring in a private member's bill. I have one on June 16 that I'm offering him if he would like to bring that in, but that would include all committees.

The Chair: All committees.

**Mr Murdoch:** Then we're not just the ones being picked on. But he wants his motion to stand and we can vote on that. But I think the thing would be to bring in his private member's bill if he feels strongly about that and I'm offering mine to him.

**The Chair:** Thank you very much, Mr Murdoch. That might actually be a better way to go.

Mr Fletcher: Speaking to and following up on what Mr Murdoch was saying, this has been discussed in some caucuses. I think that each caucus should have the right to discuss this, because following along the same lines of what Bill was saying about other committees setting a budget, there are some members who would like to have some input on this before we go ahead and arbitrarily make a decision for everyone else that would affect every other committee.

I think if we had a chance to discuss it in each of our caucuses—because there are some of us who disagree with the stipend that is paid out and some of us think that the standing orders should be changed, that the rules should be changed. There are those in our caucus who disagree because of why this was put in in the first place, when you're being taken away from your constituency in the middle of the summer when you could be in your constituency and things like that, some of the things that have to be put into it when you make a

decision like this.

I think it's a far-reaching decision that should have some discussion in our separate caucuses also, just to find out what the feeling of every member would be, because every member would be affected by this. I don't disagree with the direction you're going. I think it's a good direction. I just think that it deserves more discussion than what's going on just here today.

Mr Donald Abel (Wentworth North): Yes, I think what Derek said has a lot of merit to it. Each caucus should have the opportunity to discuss it internally.

But one point hasn't been brought up. These per diems are paid only when the House isn't in session. We don't get paid a per diem every time we're here. That hasn't been mentioned; I think that's important too.

Clerk of the Committee: I mentioned it.

Mr Abel: Did you? I'm sorry, I didn't hear you.

Ms Murdock: I'm only substituting here today, but it's certainly an interesting conversation. In terms of the legislative act, I would think that we would have problems in doing this.

But there are historical reasons for having allowed per diems in the first place. I worked for Elie Martel, who was a member here for 20 years, long before per diems were even allowed. They didn't even have staff for many years, let alone office space etc. As only Elie can do, he gives you the history of how this place has worked and how rules have come to be.

I understand Mr Stockwell's concerns and I know that I've questioned it in the committees that I do sit on. But for those members from Kenora, as you would be, and from Red—what I'm trying to think of is Gilles Pouliot's riding. Rainy River, no—

The Chair: That's Howard Hampton's.

Ms Murdock: In Howie Hampton's riding and mine they had problems over the years—I'm talking a number of years ago—in getting their members to come to committee when the House was not in session, and it was basically used as an incentive to have members come.

The Metro Toronto members don't have the problems in coming to the Legislature, which sits at the top of University hill, but for those of us who don't live in Metro Toronto, it is very enticing to sit at home in your riding where you get elected, rather than to come down here when there's no true reason to do so, or at least in your own mind there isn't. So there were reasons for putting per diems in. I think that they've changed over the years and they've come to mean something else.

As far as the PA salary goes, I want to say that it's a salary for work that I do as a parliamentary assistant in my ministry. In some instances the committee work and the PA work overlap, but rarely. I'm sitting on

committees that have nothing to do with the parliamentary assistant to the Ministry of Labour, so I take exception to the comments that were made with regard to the PA salaries.

I think that the idea of going back to our caucuses and discussing this is probably much more relevant than having a vote on it even today, and I would suggest that we defer it.

**Mr Miclash:** I understand what Mr Stockwell is saying as well in terms of the per diems, but I have to agree that I believe all the caucuses are going to be involved in discussions around our general salaries and whatever stipends we are paid around here.

I would suggest as well that we leave it up to the general caucuses to carry on their discussions. I understand as well that the leaders will be discussing this from all three parties and to let it go in a general nature from that area.

Mr Drainville: Seeing as I'm not part of any caucus, I think it's appropriate too.

Mr Stockwell: You just caucused a minute ago.

Mr Drainville: I have always advocated, and I did when I was chair of the government caucus, that we should not be paid a tax-free allowance and that we should not be getting per diems in terms of committee work and that we should get one base salary. I advocated that when we had discussions within the caucus and, as I say, I gave leadership on that way back in those halcyon days after the New Democratic Party was first elected.

# 1040

But we are not at that point, and there are a whole lot of reasons why we are not at that point, not the least of which is a lack of political will, I might say, by all parties, not one in particular, to be able to grapple with this whole issue of remuneration for members of Parliament.

Let me say it again: I am absolutely in favour of getting rid of the per diems, but it cannot be done unilaterally, it cannot be done in a microcosm on the one committee. It has to be done through discussions and the political will of all political parties so that we can get on with this. But the basic principle of getting rid of the per diems is absolutely right on.

The Chair: Thank you, Mr Drainville. Mr Stockwell, Ms Murdock has asked that it be referred.

Mr Stockwell: Referred where?

**The Chair:** Deferred, I'm sorry. Is that agreeable to you?

**Mr Stockwell:** No, I want a vote.

The Chair: Okay, fine.

Mr Stockwell: I understand why she wants it deferred, but you know, there's an old saying, "Lead, follow or get the hell out of the way," and I suppose

this is what I'm saying. I think this committee can lead by example, and there is no better way to lead than by example. If people truly believe what they're saying, then I think we should lead by example. You know something? It's like the snowball down the hill. If we pull them, it would be astounding how quickly they'd review the issue.

Mr Rizzo: I think the motion refers to the budget and I think it's a proper motion. I think what you are saying, in other words, is that instead of approving a budget of \$60,000, you would have \$60,000 minus the per diems of \$4,800 and \$4,800, so you would approve all this, a budget of \$50,000. But this doesn't stop any one of us to apply for the per diem remuneration at any time, so I don't know where we are going to get by even getting the majority of us passing this motion. This is the problem I have, even if in principle I'm in favour of it.

Mr Stockwell: Maybe it's symbolic.

**The Chair:** Seeing no further questions or comments, all those in favour of Mr Stockwell's motion, please indicate. All those opposed? Motion defeated.

Now can we move to a vote on the budget, please. All those in favour of the 1992-93 budget, show. Opposed? Carried.

#### REVIEW OF OFFICE OF THE OMBUDSMAN

The Chair: Going to item 3 on our agenda, other business, you all have before you a letter from Brian Charlton, government House leader from the Cabinet Office. The Ombudsman has told the House leaders of all three parties that she would like to appear before this committee before we debate it in the House. Can I now open this letter up for comments or questions?

Mr Miclash: She's asking us to appear?

**The Chair:** Oh, I'm sorry. She is asking to appear before us.

**Ms Murdock:** To do what? To discuss the report?

**The Chair:** To discuss our last report. Can I ask the clerk to clarify that point, please?

Clerk of the Committee: I personally have not received any comments from the Ombudsman's office. The only information I have is this letter before you, which if I may read it into the record—am I permitted to do that?

The Chair: Yes.

Clerk of the Committee: "Thank you for your letter dated April 28, 1993, that requests the three House Leaders to '...schedule [our] special report on the review of the Ombudsman's office for debate in the Legislative Assembly as soon as possible.'

"The three House leaders have agreed that it would be appropriate for the standing committee on the Ombudsman to invite Roberta Jamieson, the Ombudsman, to appear at the standing committee to discuss the report." This is the only information the Chair and I have.

**Ms Akande:** Had the Ombudsman not been invited previously to discuss the findings of the report before it was finalized, the draft report?

**The Chair:** Not since we tabled the report.

**Ms Akande:** Not since we tabled it, but previous to its finalization, she did come?

The Chair: Yes.

**Ms Murdock:** And reported? **The Chair:** Ms Murdock, please.

Ms Murdock: The way I'm reading this letter is that they're asking this committee to invite Ms Jamieson to appear before this committee.

The Chair: Yes, they are.

Ms Murdock: That's in the second paragraph, but in the first paragraph, the way I'm interpreting that paragraph is that she reported to the three House leaders and asked for debate time in the House. That's what I'm interpreting that statement to mean.

The Chair: No. That's our letter; we've asked for that.

Ms Murdock: "Schedule our special report on a review for debate in the Legislative Assembly as soon as possible." Okay, all right.

I was not sitting on this committee at the time, but my understanding was that when the Ombudsman appeared in this committee there was some dispute or concern as to the reporting mechanism and as to whom she did report, and I'm wondering what the point would be. I was hoping I could have some direction from either the clerk, the Chair or legal counsel in terms of that.

The Chair: Clerk, please.

Clerk of the Committee: The committee can invite the Ombudsman to make comments on our report if the committee so chooses.

Ms Murdock: Yes. That isn't what I asked.

Mr Murdoch: You need some direction.

Clerk of the Committee: How we will what?

Ms Murdock: It's okay. I don't want to ask the question that I want to ask.

Mr Rizzo: I'm just going to move that this committee ask the Ombudsman to appear in front of us to discuss the report, that's all.

**The Chair:** There's now a motion on the floor. Any comments or questions on the motion?

Mr Murdoch: The reason this motion has probably been presented is that if you remember in our last meeting that we had as subcommittee, we talked about we wanted to get this debated on the floor, so how would we go about it? And we already had spoken to our House leaders. We agreed—

Ms Murdock: That's what I was asking.

Mr Murdoch: Yes, and I said I can give you the direction you need. Anyway, we did this; I did this anyway, and I'm sure David did and Mark maybe talked to Mr Charlton. I went to Ernie Eves, our House leader, and said: "Ernie, we'd really like to have this in the House. What's holding it up, or how come we're not getting there?"

He informed me that they had talked about it in a House leaders' meeting, and that the Ombudsman had got hold of all the House leaders and had, first of all, asked that if it was going to be debated that she would be given a couple of weeks' notice. Also, and I'm not sure whether this was her idea or not, but the House leaders felt that maybe we should talk to her first. Maybe they had been lobbied, I don't know. I'm not privy to what goes on in House leaders' meetings. But that's the impression I got, that maybe we should have her here at this committee to go over our report first before it was taken to the House.

I said, "Okay, that sounds fine," and I talked to Mark and I did talk to David, that this is what the House leaders were thinking but that we hadn't been informed of that. That's why this letter has come through now, because Ernie brought it back up at House leaders' meeting. He brought it back up and he said, "Now you'll get a letter so you'll know exactly what we're thinking."

So that's what they're thinking. They think we should have her come here, which I have no problem with either. We made a report; let's discuss it. And we still want to probably debate it in the House, because if it's ever going to become law that has to be done, as far as I'm concerned.

So I have no problem with your motion—that's fine—but I think that's how the motion has come about.

**The Chair:** Thank you very much, Mr Murdoch. Any further questions or comments on the motion?

Mr Stockwell: I think we could resolve this issue far more quickly and with much less fuss and certainly far less money if we simply, as a committee, endorsed Bill 10.

**The Chair:** Speak to the motion please, Mr Stockwell.

Mr Stockwell: I am. I'm moving an amendment to the motion. By adopting Bill 10 we would save Roberta Jamieson a lot of time and money and effort to come down to the committee. Being fully in favour of Bill 10, I think it makes eminent sense that we should, as a committee, realizing how hopeless and useless this committee is, endorse it.

The Chair: Mr Stockwell, you are out of order, please. That motion is not before us to—

**Mr Stockwell:** Well, when do I make this motion? Maybe I'm seeking your advice.

**The Chair:** You can make a second motion. Any further questions and/or comments?

**Mr Stockwell:** Can I seek your advice, Mr Chair, to find out when I could make the motion that we adopt Bill 10 and forward it back to the Legislature?

The Chair: After this motion.

Mr Stockwell: Under "other business." Thank you.

**The Chair:** Any further questions and/or comments? Seeing none, all those in favour of Mr Rizzo's motion, please indicate.Opposed? Okay.

1050

Now, we have to look at a date to bring her in. The earliest date we have is June 2, which is a Wednesday morning, 10 am. Agreeable?

**Ms Murdock:** That would certainly gives her two weeks' notice, right?

**The Chair:** That's right. Can I have a motion to that effect, please? Mr Abel, can I have a motion, please?

**Mr Abel:** I'm sorry; I was distracted. I move that we invite the Ombudsman to meet with us on Wednesday morning, June 2.

**The Chair:** At 10 am. Thank you very much. Any questions and/or comments on the motion? Seeing none, all those in favour? Opposed? Carried.

Mr Stockwell: Other business?

**The Chair:** Under other business, Mr Stockwell, just before I get to you—

**Mr Stockwell:** Okay. I just don't want you to forget, Mr Chair.

The Chair: —there are three letters on your desk just for your perusal, to look at. They really do not need to be discussed at this time. They concern our report that we tabled in the House in early April.

Is there any other business? Is there any other business?

**Mr Stockwell:** Sorry. I was busy reading the correspondence we weren't going to debate.

My motion, Mr Chair, is very simple. Bill 10, Mr Mahoney's bill, which is An Act to repeal the Ombudsman Act, was read in the House the first time on May 6, 1993. It's a shame that our independent member isn't here, because I think this is something he could support. I'm really looking to this committee to provide direction for the Legislature, considering that this vote would probably be a free vote in all the caucuses; I don't see why anyone would want to whip this vote. I think as a committee we could provide a certain degree of thrust for Mr Mahoney in his action if we would in fact endorse this short, four-section bill.

I am one who is fully in favour of repealing the Ombudsman Act. I just find it reprehensible that anybody in this province could get a 10-year appointment and be a few years into the appointment—and I'm

of the opinion that this job is really just a super-MPP's job. I think this is what we do day in and out, and if we do our job correctly—

Mr David Ramsay (Timiskaming): It's better paid. Mr Stockwell: The point is that it's much better pay, and she doesn't even need a per diem.

I want to move for this committee that we adopt Bill 10, report it back to the Legislature, and then we'll probably save the taxpayers a considerable amount of time, effort and, most of all, money that I think is very unwisely spent in the Ombudsman's office.

The Chair: Mr Stockwell, I gather that's your motion and your preamble and everything else all combined.

**Mr Stockwell:** Everything; it's all in one. I'm just a one-hit kind of guy.

**Interjection:** And it's all out of order.

**Mr Stockwell:** This is out of order too, is it?

The Chair: Yes, it is.

**Clerk of the Committee:** The bill is not before this committee. You can move a motion—

Interjections.

**The Chair:** Order, please. It is out of order, but you can move a motion to do that.

**Mr Stockwell:** On what grounds is this out of order?

**The Chair:** Because this bill is not before us at this time.

**Mr Stockwell:** It's on our desks. I said, "Other business." Jeez, any meeting I go to, that means it's before you.

**The Chair:** Mr Stockwell, you can move a motion with the contents, but it still does not apply. Mr Murdoch, please.

**Mr Stockwell:** Excuse me; hold it. I missed that. What did he say?

**Clerk of the Committee:** Even though the bill is before the Legislature, if you wish to move a motion in your own words containing the contents of this bill, the motion could be placed before this committee.

Mr Stockwell: Okay. So you want me to read the bill?

Clerk of the Committee: No.

**Mr Murdoch:** I just understand, Chris, the motion was that this committee support this bill. That's legal. This committee can make a motion to support or not support anything. We're a committee—

**Mr Stockwell:** —of the Legislature.

Mr Murdoch: Yes.

**Interjection:** You never said it that way, Mr Stockwell.

**Mr Murdoch:** Well, that's what he meant. I understand what he meant.

Mr Stockwell: Well, Mr Chair, I didn't realize this stickler for order here was so particular.

I move this motion: that this committee endorse Bill 10 as a standing committee of the Legislature, so help me God.

**The Chair:** That's better, Mr Stockwell. Okay. We now have a motion on the floor. Are there any comments and/or questions? Mr Ramsay.

Mr Ramsay: I almost hesitate to speak to this, but if it's a motion on the floor that has to be considered by the committee, then I feel it is my responsibility to do so.

I, with my colleagues of all three parties, have worked very hard in this last year to try to make this act a better act for the people of Ontario. Nobody in this room believes that the present act is as timely as it can be, and we have endeavoured to talk to people who have had past experience with the office, we have talked with the present Ombudsman, to collect ideas from all over the world, actually, as we've looked at other Ombudsman offices from across the world, as to how we could make the Ombudsman office in Ontario the very best in the world.

I support the Office of the Ombudsman, as I think the majority of the members of this committee do, and I believe the majority of the legislators in the Ontario Legislature do. I think it would be a shame, even though this bill originates with one of my Liberal colleagues, to support it. It's a private member's bill and Mr Mahoney certainly has the right to bring that forward, and maybe it would be good for him to bring this forward and have a debate on this.

But our mandate right now is to make sure that the office serves the people of Ontario to the very best of its ability, and we have endeavoured through our report to recommend some improvements. I certainly am a proponent that that see the light of day, that it have a debate and discussion in the Legislature, and I certainly hope that our colleagues in the Legislature will support us in the work we've done and the recommendations we have made. I think there are some important changes there that need to be brought forward.

So I think it's premature to be considering this when we've worked very hard to try to improve that office so it will serve the people of Ontario better. Mr Murdoch: I know Mr Stockwell hasn't been here. We have done a lot of work and I agree with Mr Ramsay, but we have had a lot of problems too. We seem to have spent two and a half years just sort of going around in circles. I don't know whether we're getting anywhere.

We've tried, we've done our work and we'll see whether it gets debated in the House, but certainly if we support this bill, we would get rid of all the problems. We'd get rid of our per diem problems because we wouldn't have a committee and we wouldn't have to worry about that. We could save a lot of money, let me tell you, and it does cost a lot of money. This committee's really been concerned about all the money the Ombudsman spends on advertisements. Remember we had all that problem?

So I think maybe it's a good idea and maybe we should support it, so I'm going to support his motion.

The Chair: Any further questions and/or comments?

Mr Rizzo: I just want to add my thoughts. I'm new on this committee and I'm not in a position to vote for or against approval or endorsement of this particular bill. What I know for sure is that we are going to go through the report that was prepared last year, and I think it wouldn't make any sense to vote an endorsement of this bill without first going through the report and knowing what we are going to be talking about. So I am proposing that we are going to vote down the motion presented by Mr Stockwell.

**The Chair:** Any further questions and/or comments? Seeing none, all those in favour of Mr Stockwell's motion, please indicate. All those opposed? It's defeated.

Any further new business? Mr Fletcher.

**Mr Fletcher:** Going back to the question of per diems, and since you did make a political statement from the Chair, which I disagree with, I think perhaps you should file a report on how many times you've refused the per diem, sitting in this committee.

**The Chair:** Thank you very much, Mr Fletcher. Seeing no further new business, we stand adjourned until the call of the Chair.

The committee adjourned at 1059.



# **CONTENTS**

# Wednesday 19 May 1993

Subcommittee report	B-5
Committee budget	B-5
Review of Office of the Ombudsman	B-9

# STANDING COMMITTEE ON THE OMBUDSMAN

- \*Chair / Président: Morrow, Mark (Wentworth East/-Est ND)
- \*Vice-Chair / Vice-Président: Rizzo, Tony (Oakwood ND)
- \*Abel, Donald (Wentworth North/-Nord ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- \*Drainville, Dennis (Victoria-Haliburton ND)

Henderson, D. James (Etobicoke-Humber L)

Martin, Tony (Sault Ste Marie ND)

- \*Miclash, Frank (Kenora L)
- \*Murdoch, Bill (Grey PC)
- \*Ramsay, David (Timiskaming L)
- \*Stockwell, Chris (Etobicoke West/-Ouest PC)

Wilson, Gary (Kingston and The Islands/Kingston et Les Îles ND)

# Substitutions present/ Membres remplaçants présents:

Fletcher, Derek (Guelph ND) for Mr Wilson Murdock, Sharon (Sudbury ND) for Mr Martin

# Also taking part / Autres participants et participantes:

Mammoliti, George (Yorkview ND)

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Murray, Paul, committee counsel and research officer, Legislative Research Service

<sup>\*</sup>In attendance / présents







B-3

B-3

ISSN 1180-4300

# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Assemblée législative de l'Ontario

Troisième session, 35e législature

# Official Report of Debates (Hansard)

Wednesday 6 October 1993

Journal des débats (Hansard)

Mercredi 6 octobre 1993

Standing committee on the Ombudsman

Organization

Comité permanent de l'ombudsman

Organisation

Chair: Tony Rizzo Clerk: Todd Decker Président : Tony Rizzo Greffier : Todd Decker





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# **Table of contents**

Table of contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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# Table des matières

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# STANDING COMMITTEE ON THE OMBUDSMAN

# Wednesday 6 October 1993

The committee met at 1008 in room 151. ELECTION OF CHAIR

there any nominations for the position?

Clerk of the Committee (Mr Todd Decker): Honourable members, it's my duty to call upon you to elect one of your own as Chair of the committee. Are

Mr Donald Abel (Wentworth North): I'd like to nominate Tony Rizzo for the position of Chair of the Ombudsman committee.

Clerk of the Committee: Are there any further nominations? Seeing no further nominations, I'll declare nominations closed and Mr Rizzo the duly elected Chair of the committee.

The Chair (Mr Tony Rizzo): Thank you, members of the committee, for the trust and for the speed with which you acted this morning on a very complex issue.

#### ELECTION OF VICE-CHAIR

**The Chair:** I'm going to call for nominations for the position of Vice-Chair.

**Mr Ron Hansen (Lincoln):** I'd like to nominate for Vice-Chair the honourable Gary Wilson.

**The Chair:** Any more nominations? No more nominations? Mr Wilson is the Vice-Chair. Congratulations.

The second item on the agenda is "Other Business." Is there any other business from members? Okay, I think we can adjourn today's meeting. I'm going to ask members of the subcommittee to stay with us for a few minutes so we can talk about the future meetings. Thank you very much.

The committee adjourned at 1010.

# **CONTENTS**

# Wednesday 6 October 1993

Election of Chair	 	 	 	 	 B-13
Election of Vice-Chair	 	 	 	 	 B-13

# STANDING COMMITTEE ON THE OMBUDSMAN

- \*Chair / Président: Rizzo, Tony (Oakwood ND)
- \*Vice-Chair / Vice-Président: Wilson, Gary (Kingston and The Islands/Kingston et Les Îles ND)
- \*Abel, Donald (Wentworth North/-Nord ND)
  Akande, Zanana L. (St Andrew-St Patrick ND)
  Cooper, Mike (Kitchener-Wilmot ND)

Haslam, Karen (Perth ND)

Henderson, D. James (Etobicoke-Humber L)

- \*Martin, Tony (Sault Ste Marie ND)
- \*Miclash, Frank (Kenora L)

Murdoch, Bill (Grey-Owen Sound PC)

\*Ramsay, David (Timiskaming L)

Stockwell, Chris (Etobicoke West/-Ouest PC)

# Substitutions present/ Membres remplaçants présents:

Fletcher, Derek (Guelph ND) for Mr Cooper Hansen, Ron (Lincoln ND) for Mrs Haslam

Clerk / Greffier: Decker. Todd

Staff / Personnel: Murray, Paul, committee counsel and research officer, Legislative Research Service

<sup>\*</sup>In attendance / présents



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Troisième session, 35e législature

# Official Report of Debates (Hansard)

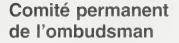
Wednesday 24 November 1993

Journal des débats (Hansard)

Mercredi 24 novembre 1993

Standing committee on the Ombudsman

Organization



Organisation

Chair: Tony Rizzo Clerk: Todd Decker Président : Tony Rizzo Greffier : Todd Decker





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#### Table of contents

Table of contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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## Table des matières

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# STANDING COMMITTEE ON THE OMBUDSMAN

# Wednesday 24 November 1993

The committee met at 1020 in room 151.

The Chair (Mr Tony Rizzo): Good morning, gentlemen. I'm calling the meeting to order.

#### **COMMITTEE BUSINESS**

**The Chair:** The first item on the agenda is the briefing by legislative research. Counsel?

Mr Paul Murray: This shouldn't be too long; it should be a fairly short briefing. It has to do with the Ombudsman having tabled in the House two special reports concerning specific investigations. One was tabled in July 1993, and one was tabled yesterday and is dated November 1993.

The first report is a special report into three specific cases.

The first one concerns the problem of systemic delay in the Ontario Human Rights Commission in processing complaints of discrimination.

The second deals with the specific complaint of a Ms R, and this also concerned the Ontario Human Rights Commission. The complaint concerned the fact that the Human Rights Commission had acted unreasonably with respect to settlement negotiations concerning Ms R's complaint of discrimination against her former employer.

The third investigation covered by that report is the complaint of Ms M, and this concerned the family support plan and the complaint that it had acted unreasonably with respect to the renewal of Ms M's garnishment order against her former husband.

Then yesterday we received a second report. Just briefly, I've reviewed the report, and there are two complaints in this one. These are two specific investigations again.

The first is the case of Mr SM. That concerned the vocational rehabilitation services branch of the Ministry of Community and Social Services and the complaint that it had failed to properly process Mr M's application for vocational rehabilitation services, as a result of which he lost a job.

The second complaint is the complaint of Mr EF. This again concerns the vocational rehabilitation services branch. The complaint was that it had failed to notify Mr EF of his right to appeal the denial of vocational rehabilitation services, which that branch is required to do.

So these are the two reports that the Ombudsman has tabled and generally what those complaints concern.

The purpose of this briefing is just to provide the committee with an understanding of what its role is in relation to these reports and to brief you on the process that's been followed by the committee in the past in dealing with these reports. In relation to that second part of it, though, the committee should consider whether or not it wants to follow the same process. If so, we can then proceed to set a date to consider these reports and to gather the information that's necessary for briefing the

committee in a more detailed way and then conducting a review of these cases.

Each of these two reports concerns cases in which the Ombudsman concluded that the governmental organization had not adequately and appropriately responded to her recommendations in terms of the action to be taken. The Ombudsman Act provides that in such cases, the Ombudsman may send a copy of her report to the Premier and thereafter make a report to the assembly.

The assembly has created the process whereby these reports are automatically referred to this committee, which is then required to review and consider the reports and then report back to the Legislature any recommendations it considers appropriate. The committee began performing this function back in 1976. Between 1976 and 1989, the committee examined in excess of 75 cases. It's been a regular part of the committee's business over that period of time.

The committee, in the past, has taken this responsibility to require it to fully investigate, examine and report on all relevant issues brought before it concerning the particular case, and in particular to "review with the...Ombudsman all phases of the Ombudsman's functions which were exercised in the particular complaint" and to "examine with the governmental organization in question the adequacy and appropriateness of its response."

Through examining the cases over the period of time I mentioned, the committee built up considerable experience and developed a process which was directed towards ensuring that these cases were examined in an effective way. That's generally the committee's role in this.

What I'll do now is go through the process that's generally been followed, and you can consider that process. I'll describe what's been done in the past and you can consider whether that's how you want to continue to proceed.

Generally, the first step that's taken when these reports are obtained is to schedule a time for the hearing and to notify the Ombudsman and the governmental organization of the date and also of the process that's going to be followed by the committee in reviewing the report.

Normally, a block of a few days or a week is set aside to consider the total number of cases that are before the committee, so they're not generally considered sort of one a week. It's usually done as a block of time during one of the recesses.

The first step then, having done that, is to direct counsel to review the cases and to collect relevant documentation. Usually, counsel in the past has met with the Ombudsman's office to go over the cases prior to the hearing, and in some instances with the representatives of the governmental organization. This is with the review so that counsel can then assist the committee in its review of the cases.

An important part of the preparation that the committee developed was the preparation of a synopsis. The committee would request that the Ombudsman and the governmental organization prepare a synopsis of the case, and preferably that the two agree on a synopsis. The synopsis would include a statement of the facts and issues which are relevant, and a statement of the relative positions of the Ombudsman and the governmental organization and the reasons for their positions. Hopefully, this can be reached by agreement. If not, separate synopses are provided.

This process has proved to be valuable in clarifying the issues for the committee and making the hearing more effective, and it also helps in terms of settling these complaints, often in advance of the committee's actual hearing of the matter.

Documents typically obtained include key correspondence between the Ombudsman and the governmental organization. An important point to note on documentation is that the committee hears these complaints in a confidential manner. The privacy of the complainants is respected. As you can see, these reports refer to just the initials of the complainants. All documents provided to the committee are anonymized before they're provided. These documents are organized, put in a binder and then presented to the members to refer to.

When all that information is organized, committee members have on occasion been briefed by counsel prior to the committee's hearing, although the normal practice has been for counsel to go through the documents at the hearing itself. Just on this particular point, the committee may want to consider making greater use of this briefing process. You may want to consider having a detailed briefing whereby I would, having reviewed the cases, take the committee through each of them, helping the committee identify the key issues and questions in advance of the meeting with the Ombudsman and the governmental organizations. I think that would be a valuable process in terms of the committee becoming familiar with these cases in advance of the hearings.

1030

The committee hearing itself is generally held in public. It begins with the Chair or counsel explaining the purpose of the hearing and the process which is to be followed. Counsel then explains some of the key issues to be decided and takes the committee through the binder of materials, highlighting documents that are likely to be of particular importance. Then the Chair calls on the Ombudsman and her staff to explain their position. The same is done after the Ombudsman has completed her presentation: The governmental organization presents its position. In both cases, generally members wait until the Ombudsman or governmental organization have completed their presentation before asking questions, though questions can be asked where it's necessary to clarify things. Generally, though, you wait until the end. Following the presentation of each of the positions and the questioning by the members, counsel can follow members' questioning where it might be necessary to draw out more information important to the committee's deliberations.

Then the committee meets in camera following the hearing to discuss and vote on its conclusions and recommendations. A process that was developed in recent years was for the committee to meet immediately after the hearing to try to come to a quick decision where that was possible and then inform the Ombudsman and governmental organization right after the meeting. Where that's not possible, the committee considers it and then reports subsequently. After the committee has reached a decision, it then reports to the assembly with its recommendations.

That's the overall process. What needs to be decided is whether that's the process the committee wants to follow. Also, we need to set a date for the hearings and the briefing if that's the approach to be taken.

If there are any other questions on the process, I've tried to go through it in a brief manner, but I can address any questions.

Mr Bill Murdoch (Grey-Owen Sound): I think we should do it because, remember, we've done this for three years, and finally we've got something to do. I think we should go ahead and try this. I was on this committee for over three years, and it's the first time we ever got anything from the Ombudsman to try to help her out that I can recall. We did do some cases, but most of them were done in subcommittee and just passed out here. We never have gone through this process that I can recall in the last three years, and there's been trouble. Maybe this would be a new era. I'm certainly willing to try it and see what happens, so I think we should go ahead. The cases have come from the Ombudsman, right?

Mr Murray: Yes.

**Mr Murdoch:** Yes, and that's the first time we've ever had this happen. Anyway, I think we should go ahead and set up some dates and things like that.

Mrs Karen Haslam (Perth): I've not been on this committee before, and I have questions in clarification. I apologize for not doing my research. I usually do my research and know exactly what the committee's about, but I just haven't had the time to do it on this particular committee because I was informed, as Mr Murdoch said, that it didn't meet very often. I would like clarifications.

Mr Murdoch: We did meet; don't get it wrong. We did meet.

Mrs Haslam: No, no, I understand that.

**Mr Murdoch:** We didn't meet and do anything. That was the problem.

Mrs Haslam: Bill, I understand that. That was my understanding, exactly what you said: that it didn't have that much business go through the committee.

**Mr Murdoch:** We tried. We did try.

Mrs Haslam: I'm not saying you didn't work, Bill.

Mr Murdoch: Better get that on the record.

**Mrs Haslam:** The Ombudsman reviews complaints. Does every complaint come in this form to this committee?

Mr Murray: No; a very, very small number.

**Mrs Haslam:** Okay. The only ones that come to this committee are where the ministry and the Ombudsman disagree?

**Mr Murray:** Yes, and not all of those necessarily come. The Ombudsman has discretion as to whether or not to report them.

**Mrs Haslam:** So she says: "You're wrong. I'm right. Absolutely no argument. This is my case. I'm sending it to the committee." Am I correct so far?

**Mr Murray:** Yes. The language of the act is a bit different, but it's that the response is not "adequate and appropriate." That's the Ombudsman's judgement, as to whether or not the response is adequate and appropriate.

Mrs Haslam: That's fine. So the letters say, "Mr Premier, I wish to speak to you," but it's put before us because obviously the Premier will not have time to meet with her on a more regular basis like we will, and it is our mandate in this committee—that's what I'm trying to get clear—to review the Ombudsman in these cases and to report to the Legislature. Is that correct?

**Mr Murray:** The second part of it is correct in terms of what our role is, but it's not because the Premier doesn't necessarily have time. We're quite a different body than the Premier. The Premier receives the report as part of the government.

**Mrs Haslam:** Fine. I understand that, then. In this case, she writes to him, and we are the body that reviews this.

More clarification: So then we redo the job. That's really what this committee will be doing in this process. We re-evaluate, looking at the ombudsperson on one side and the ministry on the other, this case here?

Mr Murray: To some extent. I think what the committee is doing, as I've tried to indicate, is going over the Ombudsman's review of the complaint to ensure that it was done in compliance with the Ombudsman Act, and generally assessing whether or not the recommendation should be supported. In doing that, it necessarily involves some examination of the reasoning and the support for that position. Similarly, we have to delve into some of those issues to be able to determine whether or not the ministry's response is adequate and appropriate. But before these cases come to us, the Ombudsman's investigation is quite detailed, and I think the committee tries not to second-guess the factual determinations.

Mrs Haslam: That was the clarification, because you were talking about, and it's my understanding in this document, how you call people and they make a presentation. So the people we call are the ombudsperson and the ministry person, not any other witnesses.

Mr Murray: Yes, that's right.

Mrs Haslam: They both present their cases and then, as my colleague here has said, we are kind of the means of last resort; we are the last step in this decision-making process?

Mr Murray: We're the last step in the process.

Mrs Haslam: So if we say, "Yes, Ombudsperson, you are correct," we uphold the Ombudsman's report. If we say, "Sorry, but we as a body do not agree with your presentation, and therefore we feel that the ministry decision was adequate," that is our decision and we make that recommendation to the Legislature.

Mr Murray: In some cases in the past there was room in between those two on the spectrum. That's where the committee decides that, for instance, there's general agreement that the ministry has acted inappropriately, but the committee doesn't fully support the specific recommendation and makes its own recommendation. The committee has done that in the past. Those sorts of things become clearer when you have a specific fact situation and the different possibilities emerge.

**Mrs Haslam:** In the past, as Mr Murdoch has said, we haven't had too many of these, is that correct? We haven't had too many of these cases like this presentation right here?

Mr Murray: There haven't been any cases referred to this committee since 1990. Before that time, from 1976 to 1989-90, there were 75 cases that previous committees have considered. So there have been a lot of cases considered in the past. There's just been a bit of a lull.

Mrs Haslam: In this process?

Mr Murray: Yes.

**Mrs Haslam:** Those are all the clarification questions I had, Mr Chair.

Mr Tony Martin (Sault Ste Marie): Being as this sounds like the court of last appeal in this thing, what if an individual has difficulty with a decision that the Ombudsman has brought down? Would they have the right to come in front of us and appeal that decision?

Mr Murray: No. You're here to review the Ombudsman's report. The authority comes specifically from the Ombudsman's power under the act to make a report to the assembly in a situation where the governmental organization's response isn't adequate and appropriate. That's how the report comes to you, in those circumstances. There's no similar process for the circumstances you described.

**Mr Murdoch:** We've had people send their problems to us, though.

Mr Murray: That's a different process that the committee established over the years.

**Mr Murdoch:** I know it's a different process.

Mr Murray: I should refer to that. A different role the committee has performed is that from its creation it received complaints of the nature you're describing, where an individual wasn't satisfied with the Ombudsman, as opposed to the Ombudsman not being satisfied with the government, and would write to this committee. Because the committee existed, it seemed like a natural body to receive these complaints.

The committee developed a process for reviewing those complaints and meeting with the Ombudsman to discuss them, not for the purpose of questioning the Ombudsman's substantive decision but to review the process and to possibly comment to the Ombudsman in terms of how things could be improved in the future or to take some steps in the particular case. But that's a different role the committee has performed, and that raises other issues. In recent years that role has changed, but we could get more into that. That's a different process.

1040

Mr Martin: Would it be fair to say that this sort of is the nub of the kerfuffle that's been happening over the last couple of years, our role in light of the role of the Ombudsman or who she responds to or who that office responds to?

Mr Murray: That specific aspect of the committee's role—there are different parts of it—has been one part of it, yes. But what we're doing here today and what I'm briefing you on, that process, really hasn't been.

Mr Murdoch: I made it quite clear to you that this committee has never, ever tried to change the Ombudsman's decision. We have had people write to us and we've felt they had maybe a right to at least an answer back from us, so we did try to look into it as to the procedure that was taken to look at their case, but not the decision. We've never, ever said that we had that right to change the decision, because we haven't felt we did have. But you're right: That started causing some of the problems. The Ombudsman didn't feel that we should be even helping these people out.

Ms Zanana L. Akande (St Andrew-St Patrick): Let me first apologize for not being here. I was at the legislative committee presenting something for the city of Toronto.

Has our previous process at least resulted—and I know it hasn't been resolved—in our having clearer terms of reference for ourselves that in fact can be advertised, if that's the correct word, put out there somewhere so that people understand the limitations of this group and wouldn't be writing to us with expectations that are unreasonable?

Mr Murray: Is that directed towards me?

Ms Akande: That's directed to anybody who can answer.

Mr Murray: Sure, I can answer that. Mrs Haslam: I'm sorry; he's in the hall. Ms Akande: Well, get him, Karen.

Mr Murray: The Chair might want to address this as well, but I think the answer is that if you're referring to our report of April of this year following our review of the Office of the Ombudsman, that report made a number of recommendations, one of them concerning this specific area. It specifically recommended that the committee discontinue its review of the specific complaints but that the Ombudsman create an internal process for examining them. That report has not yet been debated in the House, and no other steps have been taken at this time towards its implementation.

Ms Akande: If I can pursue this further, we're still existing under the old terms of reference, about which most people were quite vague, really; not everyone understood what they were and how we were supposed to operate. So one of the things that's important, I think, is that people should know, especially since they do continue to refer to us, the limitations under which we're currently operating.

Then my second question would be—I'm sorry.

Mr Murray: I'm sorry. I should have added, though, on the letters we have been getting dealing with those

complaints, that we have been responding to them and indicating what we have decided in the report, to let them know that we're not dealing with these complaints at the moment and that we've in fact recommended that in the future we would only be dealing with them for a very limited purpose, which is just to draw out general information in terms of making recommendations on the Ombudsman's process.

Ms Akande: Is it possible to extrapolate that part of the recommendations from the report if in fact we're not prepared to debate the entire report, to debate those and at least get some discussion around what the new terms of reference of this committee should be so that we're still not operating in this circular fashion?

**The Chair:** This is the most important issue that we have to face in the near future.

Ms Akande: I know.

The Chair: What I was suggesting is to try to get rid of the small problems that we have where we may have an agreement with the Ombudsman and solve them now. By the time we're finished, I think the relationship between this committee and the Ombudsman would be a little bit different, a little bit more positive, and then at that time we will be able to deal with the more important issue with a report prepared by this committee.

Ms Akande: You can bet on it.

Mr Murdoch: Zanana, you're right. You were here before for part of it and you know the problems we had. Since we have a new Chair, Tony has said that he would like to try to deal with the Ombudsman in the way he would like to do it.

Ms Akande: I understand that.

Mr Murdoch: We had a bit of a subcommittee meeting before and I was prepared to say, "Sure, if he's the new Chairman, let's see what he can do."

I think, though, and I just want to put it on the record, and he agreed, that until the Ombudsman decides to come in and sit down and go over with us that report we presented about where we think our role should go, then we won't get anywhere. But I'm certainly willing. This is a first, to say we have some cases that have been given to us now. We've never had that since this committee was formed—for every one of us here, because we're all new, are we not? Yes, since 1990. So we've never had anything to do as far as the reports that we thought we were to help out. I think we'll try this; at least I'm willing to try this.

The Ombudsman has to come, though, and sit down with us and go over that report. She doesn't have to agree with it. Then we compromise or whatever we decide. But until that's done, I think we're still going to have that circle. We're still going to be circling around wondering what we're really doing here.

So I'm leaving it in Tony's hands, as Chairman, to see what he can do, and we'll go from there.

Ms Akande: I agree, except that—not to cast any doubt on your abilities to dance, Tony.

**Mr Murdoch:** Well, I've already said that too, that he may have trouble. I've warned him.

The Chair: Especially when it comes to tango.

Ms Akande: The thing that bothers me is that it's a little bit of the tail wagging the dog. I think that at least as far as this committee is concerned and the way it operates, it may be possible for us to debate that, to state how we operate in relation to the Ombudsman and to direct exactly how we feel the Ombudsman should operate, at least as part of the recommendations, and that would be debated. I think then it would be a matter of either her objection or her compliance, which would make it necessary either to discuss it or not to discuss it, but certainly to comply with it or leave.

Mr Murdoch: And we did. We, as a committee, wanted that report discussed in the assembly because we felt that if we're whistling in the wind here as a committee and spending all our energies and having our staff spend all their energies writing a report, if the assembly doesn't agree with us, we should know. That's why we wanted it debated on the floor. Obviously, House leaders couldn't come to some agreement or give us the time. I think that was the biggest problem, just to find the time for it.

Again, that's on Tony's shoulders, so he's going to have to learn how to do a lot of dances. I wish him luck.

Mrs Haslam: We can sit late tonight and do it.

Mr Murdoch: Well, that would be fine with me. I was all ready last night to go. Karen, you have to learn. This is the first—the only—committee I've sat on that has really been non-partisan, pretty good for three years, and we've tried.

**Ms Akande:** Then why are you sitting over there?

Mrs Haslam: With all due respect, I understand that, but I've gone into a lot of committees with that same feeling and had my eyes opened. So when you say, "Gee, Karen, let me instruct you," please don't instruct me, Mr Murdoch. I've seen what's happened in other committees. I'm pleased to see this one is a non-partisan committee, because that's the kind that works best.

**Mr Murdoch:** Sometimes it isn't. I just want you to know. The odd time—but it has been very rarely in this committee—the odd person will come in and go real fast and cause a bit of trouble.

**Mrs Haslam:** We saw him; he's gone out.

**Mr Murdoch:** Well, I don't know. I haven't been here with Chris. It's the first time I've been with him. But we have tried to do something because we were having trouble with the way things were working. As I say, we seemed to be running around in circles. We did our report, and now, as I say, we have a new Chair.

Mrs Haslam: It's time to debate it.

Mr Murdoch: Well, I think it's only reasonable to let Tony try to see if he can solve our problem. Good luck. If he does, fine, all the better for us as representing our people. But if not, then I guess we have to go back and we're going to have to get down to the crunch. So we'll see what happens. But I know what Zanana is getting at, because we sure have been around. We have got some cases sent to us, the first ones in three years.

Ms Akande: Yes, but it still is the circle, and after we discuss them and decide what to do, we still have to wonder about whether in fact the Ombudsman is going to want to comply with our discussions, is going to recognize them, is going to feel that they're an imposition. The question is still begged. I think the solution by the chairperson, though God knows I support you, is in itself a recognition of the problem that she feels she has to be, or someone feels that they have to be, persuaded towards compliance, rather than it being worked upon as a matter of instruction from this committee.

I think there's a whole of grey matter around what this committee is, and then how it works with the ombudsperson.

**The Chair:** I always believe that unless you try something, you're never going to learn the trade. I think this is going to be a test, for us and for her.

Do you want to proceed?

Mr Murray: That was the end. If the committee is satisfied with the process I've outlined, then we'll proceed on that basis.

Specifically, the one thing I noted that I think there will be more emphasis on now, if the committee wants to do this, is a more detailed briefing of the committee in advance of the committee's hearings. I think that will enable you to participate in the fullest manner in examining these cases.

The Chair: In order for us to do this job, we have to set up some time, ask the House leaders to give us some time to discuss this in the winter months. How are we going to do that? Do you need a motion of the committee to ask the House leaders, or what?

Interjection.

**The Chair:** Do you want then to ask the House leaders to give us a couple of weeks to go through this? When would you want to meet? In January? In February? When?

**Mr Mike Cooper (Kitchener-Wilmot):** That would be up to the House leaders.

**The Chair:** For the House leaders to decide. So we just ask for the two weeks and then—

**Mr Murdoch:** We ask for time.

**Mr Cooper:** Yes. We just ask for the time, and the House leaders determine when.

Mr Murdoch: We can suggest.

**The Chair:** That's right: We can suggest, maybe. Is there any preference by the members of the committee?

Ms Akande: Let's get it done while we still remember what the Ombudsman is.

**The Chair:** That's my position. I would say let's ask for some time, two weeks, in January if it's possible. Otherwise, they'll tell us February or whatever.

We are going to deal with her annual report also. This is the 1992-93 report. Everyone has a copy of this, the annual report, 1992-93, from the Ombudsman? We can make copies available.

Mrs Haslam: Some of us weren't on the committee, and the problem is that when it came to the office, not

being on the committee, I don't believe I kept it in a special place.

**The Chair:** What we are going to deal with is the annual report, 1992-93, and the two special reports, one for July 1993 and one for November 1993.

Mr Murray: I'll provide a briefing on all three of them. I think what we might do is organize the two weeks where we'll start off with the briefing at the beginning.

**The Chair:** Okay. When we are deal with this, do we have to invite the Ombudsman to be present? What is usual?

Mr Murray: Part of the process is now to inform the Ombudsman, the governmental organizations concerned, about our examining these cases. We won't have specific dates right now, but we'll inform them as soon as we do of the specific dates. Maybe we'll just give them an indication now of when it might be, and do it in that way.

The Chair: Okay. Any other business?

**Mr Murdoch:** I just want to answer to Zanana, when she asked what I have been doing over here. I have in the past suggested that we should all sit differently, but it never, ever happens.

Mr Cooper: Come on over, Bill.

Mr Murdoch: It's awfully lonely over here.

Mrs Haslam: Zanana and I will come and sit beside you.

**Mr Murdoch:** That's fine. But in the past I've said I think we should all sit around together. This committee did work well together.

The Chair: Do we have more information coming from the counsel?

Mr Murray: I just want to let you know—some of you will recall this particular case. There is a case concerning the Ministry of the Environment that we dealt with in our 19th report. It goes way back to 1979, and it concerned a claim of interest that a complainant had made to the Ombudsman. The ministry hadn't responded to the Ombudsman's recommendation. It was one of these cases that we're going to be examining. We supported the Ombudsman in this case and suggested that they go to arbitration to decide the claim of interest.

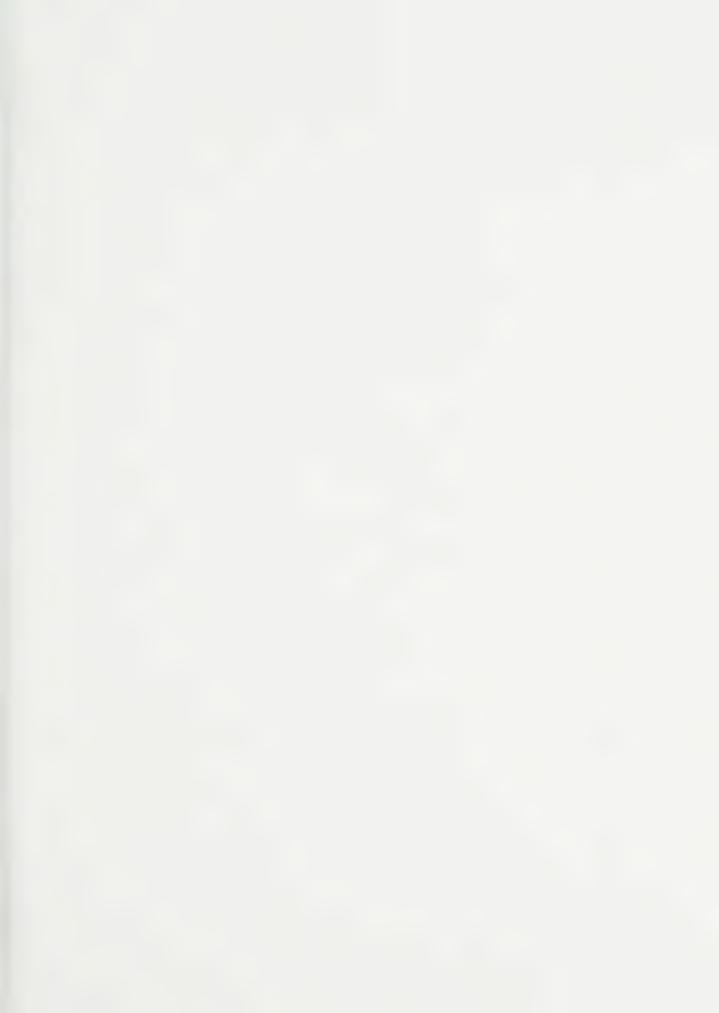
That case has finally settled. It was settled in the last month, so that's—

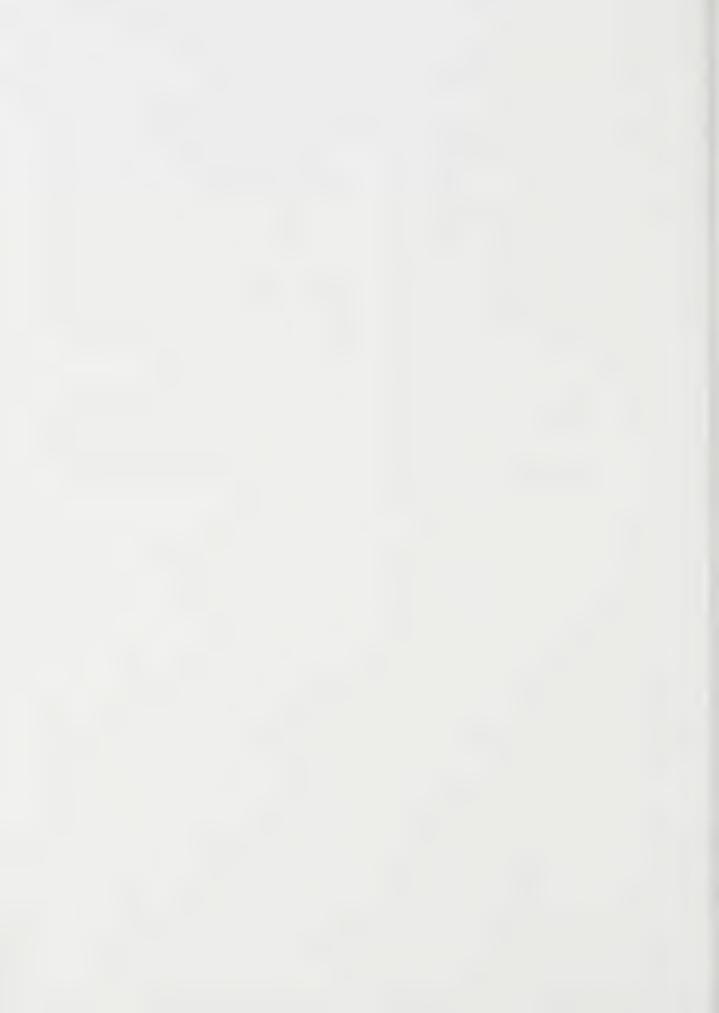
Ms Akande: Are the complainants still alive?

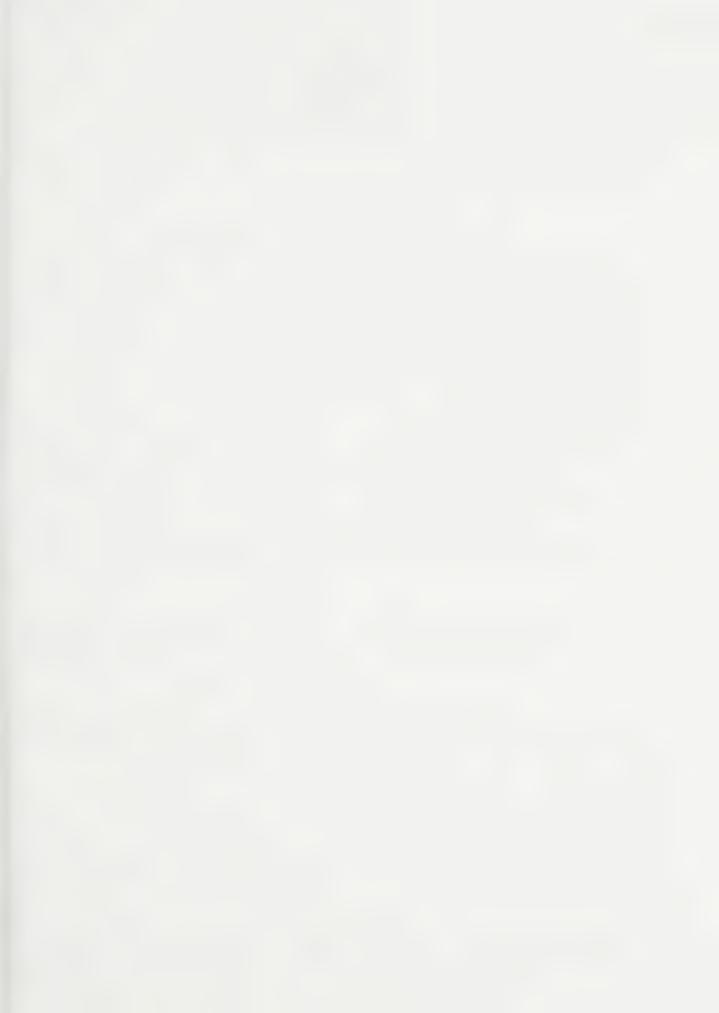
Mr Murray: Yes. That matter has been settled. It doesn't usually take that long, but that's a case in which the committee and the Ombudsman played a role together.

**The Chair:** Okay. The meeting is adjourned.

The committee adjourned at 1056.







#### **CONTENTS**

# Wednesday 24 November 1993

Committee business	3-1	4
--------------------	-----	---

## STANDING COMMITTEE ON THE OMBUDSMAN

- \*Chair / Président: Rizzo, Tony (Oakwood ND)
- \*Vice-Chair / Vice-Président: Wilson, Gary (Kingston and The Islands/Kingston et Les Îles ND)
- \*Abel, Donald (Wentworth North/-Nord ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- \*Cooper, Mike (Kitchener-Wilmot ND)
- \*Haslam, Karen (Perth ND)
- Henderson, D. James (Etobicoke-Humber L)
- \*Martin, Tony (Sault Ste Marie ND)
- \*Miclash, Frank (Kenora L)
- \*Murdoch, Bill (Grey-Owen Sound PC)
- Ramsay, David (Timiskaming L)
- \*Stockwell, Chris (Etobicoke West/-Ouest PC)

Clerk / Greffier: Decker, Todd

Staff / Personnel: Murray, Paul, committee counsel and research officer, Legislative Research Service

<sup>\*</sup>In attendance / présents





B-5

B-5

ISSN 1180-4300

# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 30 March 1994

Standing committee on the Ombudsman

Organization

Chair: Tony Rizzo Clerk: Todd Decker

# Assemblée législative de l'Ontario

Troisième session, 35e législature

# Journal des débats (Hansard)

Mercredi 30 mars 1994

Comité permanent de l'ombudsman

Organisation



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#### LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 30 March 1994

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 30 mars 1994

The committee met at 1011 in room 151.

ORGANIZATION

The Chair (Mr Tony Rizzo): Good morning and welcome. We don't want to waste too much time and I want to start right into the agenda for this session.

There is a briefing by the counsel and he is going to propose to us what we are going to do between now and the end of the session, at least until the end of May, more or less. Then it's up to us to approve it or not approve it. Then, considering also that we've never dealt with the Ombudsman's report and our own report, I would like to spend a few minutes this morning to see what you want to do about those things. Go ahead.

Mr Paul Murray: Basically, what I have been working on are the recommendation-denied cases, the two special reports that the Ombudsman released last year, one in July and one in November. I gave a briefing on that to the committee before the recess.

Since that time I've been dealing with the agencies involved and the ministries involved in terms of getting material together and trying to set some dates for the committee's examination of them, and it's been a bit complicated in terms of trying to get everyone together. We've finally been able to settle on some dates for looking at these cases. Maybe I could just run through the dates and the committee can decide whether or not this is fine.

The schedule as it stands now would be that on April 27 the committee would meet and I would give the committee a briefing on the problem of delay in the Ontario Human Rights Commission. The July 1993 report dealt with that, among other things.

Then on May 4 and May 11 we would set aside those two Wednesday mornings to actually examine the report on delay in the Human Rights Commission and we would meet first with the Ombudsman and then with the chief commissioner from the Human Rights Commission. Hopefully, we will be able to get it done in two sessions; for now we have set aside two sessions to do that.

On May 18 we would come back to a specific complaint concerning the family support plan, which also appears in the July 1993 report. Because of the schedule, it might be best if on May 18 we could meet at 9 o'clock and I could give you a briefing on that particular complaint, and then I think we should be able to deal with that in one session on May 18.

May 25 would be an open date. I am not sure whether the committee is able to meet that week or not, but in any event there is not—

Mr Mike Cooper (Kitchener-Wilmot): That's constituency week.

**Mr Murray:** Okay. As it works out, there is nothing scheduled for that week in any event.

On June 1, I can give the committee a briefing on the case of Ms R, which is a specific complaint against the Human Rights Commission that the Ombudsman investigated. Then on June 8 the committee would examine the complaint of Ms R and the Ombudsman again would appear and representatives from the Human Rights Commission would appear to speak to that.

That is the schedule I've been able to arrange with the different officials involved. It wasn't possible to get it going before April 27 just because of everyone's time schedule, so it leaves between now and April 27 open.

The other two things, as the Chair mentioned, are the Ombudsman's annual report and the status of the committee's own report from last April on the review of the Office of the Ombudsman. It's up to the committee in terms of how it wants to work those two matters in.

The Chair has asked me to talk to the Ombudsman again about how she wants to deal with her annual report, whether she'd like to deal with that before the specific complaints or in mid-June. I'll check with her on that. There's some possibility we could get to that sooner, but I'll check to see what she has in mind with that. She may not be available before then anyway.

That's essentially what I've been doing on the schedule.

Mr Bill Murdoch (Grey-Owen Sound): As far as I'm concerned, I don't think we should be doing anything until we debate our report in the House. This committee, as far as I'm concerned, is non-existent until we debate our report, the one we came up with, in the House. We had a lot of recommendations in there. I think we are just spinning our wheels, like we have for the last four years, debating and talking around here. We've written a report and I think we were quite forceful that we wanted to have this debated in the House.

I thought, when we left before Christmas, that that's what we were going to do, that we were going to come back actually in March, I understood at that time, and try to get it set up so that we would have this all looked after. At that time, the Chair said he had some ideas and would be talking to the Ombudsman and we would get some information. Now we're here, it's the end of March and nothing's happened. I haven't heard a thing. So I'm really disappointed. As I said at that time, I'd give the Chair a chance to try to straighten things out and I

haven't heard a word at all. I think we've got to debate our recommendations and things out in the House or we're just spinning our wheels, as far as I'm concerned. I'll just throw that open to some other people to discuss.

The Chair: I want to point out that it was the intention of the committee to go ahead and discuss not only our report but the annual report, plus all these issues here. If you remember, there was a motion in which we asked the House leaders to allow us to meet during the winter months so we could go ahead and do what we planned to do. We never got the authorization to do that and this is the first chance we've had to meet. This is a proposal by the counsel to try to deal with these issues first, but it's up to the committee to decide what it wants to do.

**Mr Murdoch:** It's been an issue ever since I came here and nothing ever happens. I think we have to get serious.

**Mr David Ramsay** (**Timiskaming**): Do we have any progress on our request to the House leaders to have our report debated in the Legislature?

Clerk of the Committee (Mr Todd Decker): I haven't heard anything.

Mr Ramsay: Would it be timely to re-request to the House leaders from this committee so that we could proceed with that?

**Mr Murdoch:** I think it's a must or there's no sense in us being here.

Mrs Karen Haslam (Perth): Must we do it in the House? House time is very limited. We end up with pieces of legislation that are held up because we don't have time and House time is wasted on a lot of other minor things and delay tactics. We have opposition days and we have this and we have that, and I'm concerned about taking it into the House and using House time. Can't we handle it in this committee?

**Mr Murdoch:** With all due regard, you've not been here for the last—

**Mrs Haslam:** No. I'm asking.

**Mr Murdoch:** You're new on the committee. We've tried.

Mrs Haslam: A good point, Bill, but I really can't see us getting House time to do this. If that's the case, then let's deal with it here.

**Mr Murdoch:** We've tried to deal with it here and it hasn't worked. That's the whole thing about the committee report.

The Chair: Ask to speak before you speak. Mr Murdoch: We're just having a discussion. The Chair: Can counsel explain something?

Mr Murray: Maybe just to clarify, the report that's been talked about is the committee's report following its review of the Office of the Ombudsman. The committee prepared that report after a series of hearings and then presented that to the assembly. The debate was adjourned on it, so it hasn't been debated. The position of the Ombudsman has been that it would be premature to proceed with implementing the recommendations until the House has had an opportunity to debate the recommendations of the committee. That's the context of David's

comments in terms of requesting that the debate be brought back on. In terms of the committee's role at this stage, we really can't do much more until it's been debated.

1020

Mr Ramsay: I would just remind everybody that this is an all-party committee and an all-party report. It was agreed to by all parties. I guess, as representatives of our various parties, our request was that we had some very serious concerns about the institution itself and felt that our colleagues should have the opportunity to hear our views and debate those views in the Legislature.

Mrs Haslam: I understand that. I followed it. I was here for the briefings when the committee met before the break. I'm well aware of the concerns we've had. I'm well aware of where we are with the Ombudsman. I know we have concerns about where she's coming from, what her mandate is and who she reports to. I'm well aware of those issues. I'm just saying that it concerns me about House time because I see us always haggling over what can be brought forward into the House because of the time lines involved, and that's my concern.

I have no problem if you want to go forward with this request. I am just asking if we could find another avenue than House time, because I'd hate to see this become a political football and I'd hate to see it use up House time that we could be using on other legislation.

Mr Murdoch: I hear what you're saying, but this is important and if this committee's going to survive, then that's where it has to survive, in the Legislature. If the House isn't going to support us on our recommendations, then we can come back and sit here and spin our wheels and carry on and talk about different cases and then send it to the Ombudsman and get no answer back or whatever.

I'm telling you that I'm wasting my time here if we don't do something like that. I think we have to get to the bottom of it. I've been on this committee since we first got elected back in 1990 and we've gone through different clerks now and everything, different Chairs, and I think something has to be done. The only way it's going to be done, maybe, is by showing the House leaders that we have some work that should be done, but until we debate this in the House—because we have different recommendations and a lot of concerns—I don't think we should touch anything until that's done, and maybe the House leaders will get serious about it and give us our due in the House.

Mr Cooper: I'd like to make a motion that the Chair, along with the clerk, send a letter to each of the House leaders requesting at least a response to what they intend doing with this, because I came in part way through the process in the fall and we were discussing exactly the same thing. It appears that this committee will be bogged down discussing what everybody's intentions are. I suspect that a letter to each of the House leaders asking what their intentions are on this issue would probably serve the committee well because we'll be debating this for ever, I believe, and I think we should get on with some other business, once we know exactly what their intentions are.

Mr Ramsay: That's a very positive motion and certainly I would support that. I just wonder, maybe we should discuss that, so we get very specific. It might be an assistance to the House leaders if we would discuss how much time we think we would require. I think we should keep it as a minimal time. We might have a better opportunity of getting on, and also talking to our own House leaders and saying, "Listen, we're only looking for two hours," or whatever it is; I just put that number out right now. "This is really important to a lot of us in each of our parties, and if we could find that, maybe something like interim supply or something, we'd like you to maybe shave that down, if you could fit in two hours, even if it was an hour at one time, an hour another time, whatever it is."

Again, I just throw those figures out, but I think we could decide what we feel we need for the time. It might be a great help to the House leaders to give them a specific time and then go from there. We'd all have to do our lobbying, say that this is important to us and that it is a minimal amount of time, whatever it is, but to get it on the record, and also, we'd like to bring it to a vote. It's brought to a vote and that's the point of bringing this to the Legislature. It means the recommendations then would come through.

Mr Murdoch: I agree with what David's saying. The main thrust, we've got to realize, is that this was, as David said, an all-party report. We all agreed on it. As Karen may tell us, sometimes we do some grandstanding in the House—I don't think any of us here would be accused of that—but at least it was all three parties. So it's not something that a party person or a party wants to make a hit on or anything like that. We just want to get some answers so that this committee can go on and function properly. I think that would be a great idea, and if we set up some time.

If you just set a date for it, I'd be quite happy, and we split the time between the three parties. We'd get something on and then we could have a vote and if the House supports us, then we can go on or whatever. We may have to set a day for it and possibly the next day because of some conflicts or something like that, but yes, whatever time you think would be fair, I'd be willing to go along with that.

Mrs Haslam: Four years ago I wouldn't have had that concern, to tell you the truth. I thought we were here to do a job and we could all work together, but four years in the House have certainly made me much more jaundiced in my opinion, and serving on committees with non-partisan people and watching them become very partisan five minutes later in question period has certainly coloured my position in many of these committees, and I'll be very blunt about that.

I think the time lines are a very good idea and I think that would address my concern about using unwarranted House time over this position when we ostensibly are supposed to be all in agreement with this. So I would agree; I think Mr Cooper's motion is effective and, as you say, very friendly and certainly worth our looking at, and I like what Mr Ramsay has said about giving the House leaders an option of time, because the House

leaders are always dealing with that issue about how much time and when it comes forward and whether there are going to be some actions around it that will hold us up in the Legislature unnecessarily. So by the committee asking for specific time lines or recommending that, I think that would alleviate my concerns about taking up House time on this issue.

Mr Murdoch: I just want to answer that too. This committee has been the best committee I've sat on as far as non-partisan, and being that you haven't sat here, I want to tell you though that we've gone for four years and we've not had a lot of problems with partisans in this committee. That's why I say I think that this can work, but we have to do that before anything else.

Mrs Haslam: That's fine, Bill. I'm not saying it's this committee. I'm saying that in committees I've been in, I've sat across from somebody who said, "Let's make this decision in a very non-partisan way," and 10 minutes later asked the most ridiculous, disgusting question in the House around what we just decided. So excuse me, but don't lecture me on the non-partisan. I'm sorry; I've lost my naïveté three and half years ago. I'm not blaming this committee. I'm only saying that would address the concern I have.

**Mr Murdoch:** When you sit on this committee for a year, you'll understand.

**Mrs Haslam:** Gee, Bill, you're not going to give me the last word, no matter what, are you? This is going to be a very interesting committee.

**Mr Murdoch:** I will even give up and Karen can have the last word; so Karen, say the last word and that's fine with me.

Mrs Haslam: Thank you, Bill. You're wonderful. I am going to enjoy this committee, working with you.

**The Chair:** Can I ask the clerk to read the motion we are going to be voting on?

**Clerk of the Committee:** I am paraphrasing a bit; Mr Cooper can correct me if I am wrong.

Mr Cooper has moved that the Chair write to the House leaders renewing its request for a debate in the House on the committee's report on its review of the Office of the Ombudsman.

A specific amount of time can also be attached to that. Mr Ramsay had suggested two hours.

Mr Cooper: One day.

Mr Ramsay: One afternoon.

Mrs Haslam: Why would we take a whole day?

**Mr Ramsay:** Well, it's one afternoon. You're talking about two and half hours in reality, is what it is. It won't start till 3:30, so—

Mr Gary Wilson (Kingston and The Islands): Except, as Dave suggested, it could be on different days, so we could set a limit of two hours.

Mrs Haslam: If we agreed to go less than a day, it means that the House leaders could do a fast passage of something else. That's the only way some of these things are going to get through, on fast passage, so why don't we do ourselves a favour and maybe even say two hours and then the House leaders can say, "Great, because

we've got something else that will fit in here and we might get it done"?

The Chair: All in favour? Fine.

This doesn't stop us from dealing with the issue that we are facing today in terms of our agenda, so I want to listen to your opinion. What about the agenda here?

**Mrs Haslam:** What about the time, though? *Interjection*.

Mrs Haslam: It does in a way, although you've left us a good spot there in the beginning of April, should we have to do something after debate. That's assuming that this gets into the House the week before April 27, but in a way it does affect the schedule we set. You've got us in every Wednesday from now till May, and I think what Mr Murdoch is saying is, "I'm not going to come if I'm just going to spin my wheels."

In all honesty, I think Mr Murdoch is correct. I'm glad we have a lump of time there that we could maybe look at. I think we have to take this into consideration.

1030

Mr Murdoch: I appreciate what Karen's saying. I think we should put a little bit of pressure on our House leaders that we want something and we feel we can't deal with these other things until that's looked after. I'm certainly willing to come back on the 27th and say, "Where have we gone on this?" May is a rough month for me. I'm not going to be around too often, but Chris can come in or someone else if I'm not here.

**The Chair:** Let me interrupt you for a second if I can. I think we should go back to a few months ago when we discussed this issue. What we decided then, because of the sense of goodwill that was coming from the Ombudsman's office, there was an agreement that we were going to deal with the annual report, with some of these issues first, at the same time without forgetting that we wanted to deal with her report. We don't want to go back now and say we changed our minds. Our minds were with her. We discussed it, we agreed already with her that we were going to deal with the annual report and with this other report before, and at the same time, we were going to ask the House leaders to deal with our report. We want to deal with the whole thing. Going back now to her and saying, "We changed our minds; we want to deal with our report first and then with the others," I think we are going to change our minds, not hers or anybody else's.

Mr Ramsay: I'd like to say that I agree with the Chair. I think if we are feeling a sense of lack of importance in this committee it's probably because we haven't proceeded with our work. If we have an opportunity to proceed with our work and to work on action-denied cases—that is one thing we were concerned about in the past. Now there appear to be some of these cases before us so that we can do the job we're mandated to do here. I think we should be doing our job.

I think it can be a simultaneous process as we seek approval from the House leaders to move our report forward in the House. At the same time, I think we should do our work here. If we feel that this committee is of some use and we should exercise our power as

legislators, then I think we should do our work. If we don't, then we should just pack up.

Mrs Haslam: Actually, I was going to agree with Mr Murdoch. While we in the committee would take a look at this type of schedule, why couldn't we say in a very clear way to the House leaders, "There isn't any sense in us going forward if we're not going to have the opportunity to have this dealt with"?

I understand what you're saying about dealing with it on a horizontal basis. What I'm not sure of is what you are going back to the Ombudsman with—this type of schedule for her? She would be in when, May 4?

The Chair: Yes.

**Mrs Haslam:** So we're looking at a good month away. Does she have to know now about May 4?

Mr Murray: It has taken actually quite a bit of coordination to try to get these dates. That's why there's a month's delay, because of all the times in terms of coordinating dates and so forth.

**Mrs Haslam:** She's already aware of May 4 on a tentative basis, that this is something we could be discussing?

Mr Murray: That's right. I've spoken with the Ombudsman and the Human Rights Commission and the others, but in terms of being able to coordinate things, to come back, in terms of the Chair having directed what I was to do on this, I did that and these are the dates we were able to coordinate. The reason we couldn't do it sooner was because of the fact that there were other commitments in terms of getting everyone together. If the committee does set this aside, then it will put things off probably.

Mrs Haslam: I'll go with it. I'll change then, Mr Chair, and say fine, but I do agree that we have to be very straightforward to the House leaders in stating that, although we have set these dates aside, there is some question as to the validity of going forward if the original problem is not settled in a very straightforward manner.

Mr Murdoch: I must remind the Chair—I think it was you who said you felt there was some sense of cooperation coming from the Ombudsman. I haven't seen this yet. I'm disappointed now because you've said that. At that time, I said I would give you a chance to try to sort things out, and I thought we would have been here sooner. You explained what happened, but I haven't seen the cooperation there. So I have to say I'm glad you see that; I don't at this point.

I still stick with what I said at first. I don't think we should go on. I disagree with what David said, that we should go on and do these things. I think we've got to make it quite clear that this committee means business. Again, I stress that I've been sitting here for four years. We've done this over and over again. I will say right now that if we carry on, I don't think we'll hear anything from the House leaders. We'll carry on and two months from now we'll be here complaining again that our report has not been debated. We'll be upset because the Ombudsman is not dealing with us fairly. I'm just putting this out. I'm trying to look into the future, but I think I have some experience in this, by being here so long, that that's

what will happen. So I have a problem with going on.

I would ask again, what was the 27th for?

**Mr Murray:** A briefing on the problem of delay in the Human Rights Commission, a briefing in anticipation of the meetings on May 4 and May 11.

Mr Murdoch: I can see us coming to that meeting, because I would hope we'd have some information from the House leaders by that time. I think we have to set up a meeting to come. I'm willing to listen to anything at any meeting. I mean, we're here; we might as well discuss something. I think we can do that. With regard to the other dates, as I said, unfortunately, I won't be here on the 4th, for sure, but that's not to say someone else can't be in my place.

**Mrs Haslam:** Why don't we set them up and put in the 27th?

Mr Cooper: Hold on. Obviously, I don't have quite the frustration level that Mr Murdoch has because I've dealt with committees, but timewise, we're in a bind. We can't control what the House leaders are going to decide and we can't determine when they might possibly get this in the House. What I might suggest is that I'd go along with Mr Ramsay, that this committee still does have a mandate and a job to do.

I would suggest that we accept this schedule, but to go along with Mr Murdoch, I would suggest that before the House rises for the summer, this committee get together and determine whether or not it will go on, depending on what happens with our report from the House leaders and whether it gets debated and actually fight, maybe even go to the Speaker at that time and say that it is a recommendation of this committee that the committee no longer function, but to allow to the end of this session, because we do have stuff that's already on the schedule. Otherwise, it could go on for ever. To kill it before because of time lines, which is what Mr Murdoch is suggesting—I would say, put up with the frustration just a little longer but have a mandate from this committee before the House rises on whether or not we will continue.

Mrs Haslam: My recommendation was only that if that's the case about April 27, we should be very clear in the letter to the House leaders of our schedule and the fact that on April 27 we'd like to know. Give them that date; it's a month away.

Mr Murdoch: All I can do, to answer Mike back, is that we've heard this for four years, because you're new. I understand that; you haven't been here. Give you a year here and you'll either leave the committee or you'll be saying the same thing as I. I've tried to hang in because I thought somewhere along the line we may get our committee on side and it may become a good committee.

The only thing I've found about this committee is that it's non-partisan, and that's been the best thing about the committee, other than whether we've done any work or anything. For four years we've just sat around here and said: "Why aren't we doing something different? What is our mandate?" We could never figure that out. The only good thing about it was that all three parties agreed that we had a problem.

Unfortunately—and this is the way the setup of the House is—members change. That's fine; you can't do anything about that. But I guess I'm the only one who has been here since the start. David's been here quite a while, but he wasn't right at the start. Again, if you want to do that, all I can then do is be able to say, "I told you so." I'm not going to argue with you, because I said that we try to get along here, because we're here for a common cause.

If you really want to do that and carry on and go ahead, I'm not going to be the stick-in-the-mud and say, "No, you're not going to be able to do that," or argue about it. I'll let you do that, but just be prepared to say at the end of this session: "Are we going to meet through the summer? Because we've got to sit down and discuss this and we've got to get it in to the House leaders."

It will supposedly be a summer meeting and then we'll come back next fall and I'll be talking to the Chair, "I thought we were going to meet in the summertime and get this all discussed," and we didn't because there wasn't any time or the Ombudsman wouldn't meet with us or we couldn't do this, and next fall there will be some new members in and they'll say, "Maybe we should wait until the end of this session," and before long there will be an election and this committee will sit and we will have had five years or whatever of non-productivity. But fine, I'm not going to be hard to get along with.

**The Chair:** Okay, we all agree then? Any new business? The meeting is adjourned.

The committee adjourned at 1040.

# **CONTENTS**

# Wednesday 30 March 1994

.... B-21

Organization
STANDING COMMITTEE ON THE OMBUDSMAN
*Chair / Président: Rizzo, Tony (Oakwood ND)
Vice-Chair / Vice-Président: Wilson, Gary (Kingston and The Islands/Kingston et Les Îles ND)
Abel, Donald (Wentworth North/-Nord ND)
Akande, Zanana L. (St Andrew-St Patrick ND)
Cooper, Mike (Kitchener-Wilmot ND)
Haslam, Karen (Perth ND)
Henderson, D. James (Etobicoke-Humber L)
Martin, Tony (Sault Ste Marie ND)
Miclash, Frank (Kenora L)
Murdoch, Bill (Grey-Owen Sound PC)
Ramsay, David (Timiskaming L)
Stockwell, Chris (Etobicoke West/-Ouest PC)
In attendance / présents
Clark / Croffian Dasker Todd

Clerk / Greffier: Decker, Todd

Staff / Personnel: Murray, Paul, committee counsel and research officer, Legislative Research Service





B-6

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B-6

ISSN 1180-4300

# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 4 May 1994

Standing committee on the Ombudsman

Ombudsman special report on the Ontario Human Rights Commission

Chair: Tony Rizzo Clerk: Todd Decker

# Assemblée législative de l'Ontario

Troisième session, 35e législature

Journal des débats (Hansard)

Mercredi 4 mai 1994

Comité permanent de l'ombudsman

Rapport spécial de l'Ombudsman sur la Commission ontarienne des droits de la personne

Président : Tony Rizzo Greffier : Todd Decker

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 4 May 1994

# ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 4 mai 1994

The committee met at 1010 in room 151.

OMBUDSMAN SPECIAL REPORT ON
THE ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mr Tony Rizzo): We are going to start this meeting today by welcoming the Ombudsman and the members of the standing committee on the Ombudsman to today's meeting, in which we will begin our examination of the Ombudsman's special report from July 1993.

Before getting started, I want to explain briefly the purpose of the committee's review, as well as the process the committee will follow over the next two weeks.

The Ombudsman's special report to the assembly outlines the results of three separate investigations. As with all Ombudsman's reports, it has been referred to our committee, and our mandate requires that we review and consider the report and that we report back to the assembly the results of our review, including any recommendations we may choose to make.

The first investigation outlined in the Ombudsman's special report which we will review is the Ombudsman's investigation of the matter of delay, in the Ontario Human Rights Commission investigation, of complaints of discrimination. Over the next two weeks, we will hear from both the Ombudsman and the Ontario Human Rights Commission on this issue.

We will hear today from the Ombudsman, who will explain her report on the matter of delay and the conclusions she has reached. Next week, we will hear from the Ontario Human Rights Commission, which will provide response to the Ombudsman's report. We are also agreed that the Ombudsman will be given an opportunity to reply to the commission's presentation.

The format we have agreed to is for the initial presentation to be approximately 15 minutes, followed by questions from members. As a possible approach to the questioning—and this is something we have to have final agreement on between the members—I would like to suggest that we proceed in two rounds. The first would give each party 20 minutes to ask questions. This would be followed by a second round in which each party would have a further 10 to 15 minutes to ask questions. This approach, I think, would give members the opportunity in the second round to pursue questions which may be raised by other members during the first round of questioning, of course, if there is an agreement between you.

We'll begin now with the Ombudsman's presentation, and again, welcome, Ms Jamieson. You can start as soon

as we find agreement to my proposal in terms of how we are going to deal with it. Are we all okay with that? That's fine. So you can proceed with your presentation.

#### OMBUDSMAN OF ONTARIO

Ms Roberta Jamieson: Good morning. Bonjour. In my language, sago. I am very pleased to be here this morning and to meet with committee. I will respect the Chair's time limit and try and make the best use of it so that I'm of assistance to the committee.

This report that we're here to discuss involves an investigation that I began in 1989, having received a number of complaints over a period of time on delay issues at the Human Rights Commission. After I got a significant number of complaints, I broadened the scope of the investigation so that we were able to look at the commission's general handling procedures and its internal strategies that it had adopted to deal with issues of backlog and case management problems.

I concluded my first tentative report in 1990 on 38 complaints and found them all to be supported. I knew when I was doing the investigation that we were dealing with an organization that had gone through many changes from the 1960s when it was created until the period of my investigation. I knew too that it had difficulties in staffing, changes to the code, increases in complaints and so on, and took all of those things into account.

In 1990, the commission received my first findings and had an opportunity to respond to them. Some of the findings included: I had found a delay in completing investigations; I had found that there were unassigned cases inactive for long periods of time; I found that there were very aged cases still incomplete; I found that was a middle group of cases that had been neglected; and I found that there were statistical reporting omissions, that things like early settlement initiatives didn't make their way into the numbers for the overall case load. I also found that I continued to receive delay complaints at a fairly steady rate over the period of time.

The commission had ample opportunity to respond in 1990, and in fact did respond, but improvement was not there. By 1991, I finalized my report and presented it again to the commission for its response and finally to the Premier, which is the process that I must follow, because I was not satisfied that there had been enough improvement.

What I found was that human rights officers themselves were acknowledging that the delay made settlement and even investigations of the cases very difficult and that this was continuing. I felt also that the commission's conduct significantly undermined and even nullified the effectiveness of its own processes and prejudiced both complainants and respondents in respect of the proceedings and their fair hearings and their ability to get a timely remedy. In the circumstances, I found that the commission's conduct was then tantamount to a failure to enforce the code effectively.

The Premier responded on behalf of the government of Ontario to my findings and my recommendations and undertook a number of changes: to add a number of additional officers, to improve case management procedures, to alter the board of inquiry process, to review the Human Rights Code, to make this a more manageable system to deal with human rights complaints.

I was satisfied that those changes would indeed give the commission the best chance to improve and closed my investigation but continued to monitor. After a period of time, I even stopped monitoring because I saw improvement. That was 1991-92. A year later, I was still getting complaints. I had another look. In 1992-93, I found that the improvements that were there were shortlived and we had in fact slipped back.

What was I to do then? At that stage, I had gone to quite unprecedented lengths of investigating, giving ideas and monitoring. Although there was some improvement, there was not the substantial improvement that we had all hoped for and that I thought might be achieved. I felt at that time that it was not appropriate for me to act as a trustee or continue to try and micro-manage from a distance by again and again investigating delay complaints about the commission. I knew the problems were there, and many of the problems they readily acknowledged.

I, having exhausted what I could do as the Ombuds-man—investigating the complaints, putting forward my ideas—felt that it was time, in the public interest, for me to raise this matter with the Legislature.

This is a not a typical "recommendation denied" case where I look at a file, put forward recommendations, government refuses to respond and then I come to the Legislature and to this committee for support. Government had responded, but the improvement just wasn't there after a time.

I made a decision that this was one time when, in the public interest, I needed to raise this matter with the Legislative Assembly and with this committee. I felt that while there was short-term improvement, it might be that the whole system for enforcing human rights in the province couldn't be brought to a really acceptable state as long as we left the system within the existing legislation and the organizational framework that was there.

I also was well aware that there were a number of reports that had been done and were put before the Legislature, and were available to the commission, going back to 1985. In 1985 and 1987, there were management reports. There was the Cornish report in 1992, which had 88 recommendations on the Human Rights Commission and the code. There was my report of 1993. There now has been consideration by one of the other committees in the Legislature dealing with the commission. I knew that there was a good deal of work out there, ideas for

improvement that have been put forward, and I felt that in the public interest I needed to raise this issue with the Legislature and ask them to take into consideration all these things and my comments. I felt at that time, and said so, that further devotion of resources on my part to investigate was not going to be helpful, that a broader reform was called for here.

#### 1020

I think that, frankly, we've reached the point and I've reached the point where it is time—and I had reached it when I made my report to the Legislature—to stop studying, to stop investigating, to stop criticizing and to look, frankly, at how the Ontario Human Rights Commission can be supported to get the job done that needs to get done. I think the time is here to look at the creative and positive recommendations that are contained in all those reports that were done by people who are well versed in this field; a lot of public input, a lot of terrific proactive ideas there, and I think it's time now to pay attention to those ideas and to take them into consideration and to have them dealt with in some fashion.

I'm concerned that for my part a continuing focus on issues of delay and backlog over time is really bankrupting or will bankrupt the Human Rights Commission's ability to be creative, not to mention its resources in responding to all these reviews and investigations. I don't think any agency can continue to sustain that level of stress, of examination on a daily basis without being undermined, without morale suffering. If it's constantly reacting and putting out fires, how will it be able to get on with the task at hand?

I also think that recommendations in support for the Human Rights Commission movement forward will not be helpful either unless the commission accepts some responsibility for where it is and looks at realistic solutions to fix the problem. Having said that, I think there are some primary questions that need to be faced if we are to move forward, and my message here today is, it is indeed time to move forward.

First, one of the primary issues is the role of the Human Rights Commission. This needs to be addressed and reconciled. Is it an advocate representing complainants against respondents, or is it an investigative body, independent and apart, with enforcement powers and access to quasi-judicial processes? It seems to me that this needs to be clear so that the public will be clear in their expectations for the Human Rights Commission itself, and so will respondents. If a respondent feels that it's an advocate for the other side they're going to, we'll not have a satisfactory process or people who will feel they've been dealt with fairly. That's a primary issue.

I also have a number of other areas where I would suggest time needs to be spent, and I will come to some of the areas where I continue to be concerned.

One, I think the commission needs to be supported in its mandate to do proactive public education and outreach. If it's always responding and reacting, how can it lead? How can it move public opinion and view forward on many of these issues? How can it create the environment in this province in the 1990s and into the next century for respect for human rights? How can it

predict trends? How can it talk out in the public and get us thinking and talking about how discrimination manifests itself in the 1990s? These are things that are in its mandate and that I believe it would like to do.

Second, a systemic approach to investigation, to intake and resolution of complaints is required. I think every member of staff—and we know something about this at the Ombudsman, given that all of our staff also need to be able to identify in every complaint that comes in the door what the systemic aspect is. There is the greatest potential for positive impact for the future. And it's not a matter of "over here we'll do systemic and over here we'll do individual"; we need to do them together. That expertise, the way to identify it, manage those things, predict trends throughout one department, throughout many, throughout the public and private sector needs to be there.

The third thing I think is necessary is to streamline the complaints process itself. The Human Rights Commission here has the expertise, and I do see commitment. I received a package of documents from last April 29, just at the end of last week, which gives me some hope, some idea that the commission is indeed moving in the right direction. I should say, however, that I have seen case management ideas before. What is essential is that they be implemented, that there be follow-through, and I think with support, this is possible.

Some of the areas that continue to trouble me in the statistics that we've just reviewed are that, yes, the total case load is increasing; secondly, almost 50% of formal cases remain unassigned; third, there is still a middle group of cases, not the early ones, not the old ones, but this bulge in the middle that is aging. That is still there and needs to be dealt with.

Also, there continue to be omissions in the statistical reporting so that you can't get a whole picture of the case load. The early settlement initiative files don't get a number assigned until the date they're ready to be closed. So they're opened and closed on the same date, virtually, which means you don't see them in the whole case load as they're being worked on. I think that's important.

Cases that go to reconsideration and to boards of inquiry are not counted in the total case load either, so we can't get the big picture of what is there at the commission. I think this would assist them, if you could see that.

I continue to receive complaints at a steady rate on the issue of delay.

There are also new policies that are being developed within the commission that require people who want an extension of a time period to go for reconsideration to go through a process that may well not be necessary and causes further delay.

Those are some of the issues that still jump out at me when we review the latest statistics from the commission itself. But I want to be clear: I think the commission itself is in the best position to work on the streamlining of the case management and the processes themselves. They know better than anyone what the issues are and they know better than anyone, I believe, how they can be

dealt with. The fourth thing I'd like to raise is that I believe the commission needs to be supported in its reasonable recommendations, what they know would be successful today and what they need to prepare for the future. I think they need to be worked with. I think they need to be asked what their views are. I think they need to be allowed to take responsibility for the current state of affairs and also for the future, including fundamental change for the future.

As I said before, I got a package last week which speaks to some initiatives which gives me hope for the future. Implementation will be the key, and support for that is essential. No institution can withstand the criticism on an ongoing basis; it will be demoralized and paralysed as a result. It needs to be supported and equipped to work for the future.

#### 1030

I think the commission realizes that it is not an easy task to change an institution. This is hard stuff. This takes risk-taking. This mean chances. This means courage. This means a willingness to try some things you might not have tried before. A continuing criticism from the outside for me or anyone else is not going to help them have the courage to take those steps.

I think it is time to move forward. I think it is time for many of us to be quite supportive in our ideas and our recommendations and to give a very strong message to the commission that they have that support, they have that room, they have that responsibility to make the changes.

I don't think new studies or reports are going to be helpful. They're all there, from the Stephen Lewis report to the Cornish report, from my reports to reports that the committee has and the Legislature itself.

I do think, in the final analysis, whatever the commission feels are priorities need to be enunciated, and they are again the best equipped to do that. Is it a code review? Is it a concern about the need to make sense of a proliferation of agencies: Pay Equity Commission, Employment Equity Commission? Is that the priority? Is it the need for a full-time commission? Is it the delegation of decision-making internally? Is it the need to further establish arm's length from government?

These are all candidates for priorities, but I believe the commission is in the best place to let you know what its priorities are. That, together with the number of reports that have been filed, I think, will give ample ingredients to work with.

The last thing I want to say is that there is a need, I believe, when all is said and done, there will be need for a formal process to resolve complaints. From my dealings with the public over time, I believe the public will not accept that their complaints have been dealt with unless there's a formal process where they feel they've been heard and that that's important. That's going to be a struggle, because we already know we have a judicial system that is having its own case load difficulties. That is an area of real challenge and will take some time and considered attention.

In closing, I think I should say it's very clear to me, as

I travel and as I listen to people, that in this province we are facing a difficult challenge. We are a microcosm of the world. There are many issues that we will face here, intercultural, intracultural, and we have an opportunity to come to grips with them.

There will inevitably be conflict as many people from all over the world attempt to live together in this province, and I think we need to recognize that conflict is inevitable and devote our efforts to managing the natural conflict that is there. That's the issue that clearly faces your children and mine today and tomorrow. One of the clear messages for facing that is going to be, what conduct is acceptable in this province?

We need a body that is equipped to, first, inform us on the standards and the conduct that is acceptable, to stand up for the values we all believe in and have enshrined in the Human Rights Commission. Secondly, we need a body that can move quickly to enforce. If delay is there, we will not have enforceable human rights. That is essential.

We need a body that can tell us what the waters are like up ahead as we move forward. We need a body that's able to take quick and effective action where it finds difficulties that are facing us. We, I believe, are a microcosm of the world and as a result are a real beacon of hope for that same world. If we can find a way to live together in this city, in this province, to manage our difficulties, to enforce the behaviour we believe is acceptable and honours our values, we will be a model for the country and for the world.

We've come a long way in that, but we've got a long way to go. We have to ensure that we've built the institutions and we've sustained the institutions and we've supported the institutions that we're going to need to safeguard all the rights we enjoy and are pledged to protect, and human rights are central.

I am here today to ask the committee, to ask you as legislators, to provide the legislative support to the Human Rights Commission so that it can be successful in enforcing human rights in Ontario. Thank you.

**The Chair:** Thank you, Ms Jamieson. The first person on the list is Mr Morrow.

Mr Mark Morrow (Wentworth East): Welcome this morning. Do you see the problem as staffing overload or is it an interpretation of the legislation or is it a combination of all?

Ms Jamieson: I have seen all of that through the reports. I have seen some very positive steps that have been taken. I think more need to be taken. What I have tried to do is to say that I don't think there are quick fixes. I don't think a staffing change here or there is going to solve the difficulty. I think it's a macro approach that's required and one that combines all the areas that are highlighted in the many reports that are before the Legislature, including the code itself.

**Mr Morrow:** Chair, if you don't mind, on the next question I'm going to look for your guidance, if I'm out of order or not. In your interpretation of this government's Bill 40, what's your interpretation of rotating strikes?

**The Chair:** I would like to stop that. This is out of order. This is not the issue we are discussing today.

Mr Morrow: Thank you.

Mr Tony Martin (Sault Ste Marie): You raise some really, really important issues here today, issues that are in my mind fundamental to what we do as a government in trying to set in place the framework within which all of us will live together. I think you're right when you say that Ontario is a microcosm of the world. We have a chance in Ontario, in my mind, to set a standard if we can get our act together.

One of the things that really concerned me, before I ever got to this job, in the role I played out there as an advocate in the community, is the pattern that develops when new legislation is brought in. People work hard at finding a way to frame that which we want to uphold as the rule of law and the way that we'll act. We put it in place and almost immediately it's abused. People see this as something they've been given by right according to the Legislature, but it's not in fact happening for them. So as a government, we set up an agency to speak for them which becomes almost as big a bureaucracy as the bureaucracy that's administering the program in the first place.

Certainly the Human Rights Commission is one that's set up to protect the rights of people in front of what they rightfully have coming to them. Your organization is one that's set up with that in mind. Certainly my office in Sault Ste Marie is an office that advocates on behalf of people who feel unduly done by re the way that we deliver government services or their rights.

We all take a degree of criticism because we can't do the job. I suggest to you that your office, my office, the commission, will never be able to do the job, because the more people we put in place and the more systems we set up, it seems the more we attract people who need to be serviced, who have complaints and all that kind of thing. It just goes on and on.

In this day where you have a government in Ontario which is very, very concerned about questions of equity and access and human rights—and we've made some changes, some very significant changes over the last three and a half years in the area of defining what human rights are and what people have a right to do. Bill 40 is one piece of that and all of that, and yet we haven't found a way to in fact make those things the rule of law in our communities, the standard by which we all—

You've suggested some ways here that we might be helpful by way of our advice and what we might do here. The question is bigger, in my mind, much, much bigger, and I have to tell you that sometimes I feel quite hopeless in front of it. But I have not given up hope, and that's what I think I hear you saying today. You had suggested looking at systemic reasons for things happening. I suggest to you that we've not found a way yet to really apply what we know is in the best interests of all peoples by way of legislation.

I'm groping and grasping and looking for answers to that. Do you have any answers above and beyond sort of some of the very limited specific things you've put forward here, coming from your own experience as Ombudsman and knowing that, even in your work, you're criticized because you're not able to do enough?

You talk here about the commission going out and doing proactive things, public education-type things. I know that one of the ombudspersons in my community attempted to do that, but was pulled back because there weren't enough resources and time to give her to actually do that. How do we resolve all of that?

**Ms Jamieson:** You've raised quite a number of issues, and I'll try and speak to some of them.

One of the things is that you're right, I am very hopeful. I think the systemic approach—and that's one of the things that I have come to in my own time as Ombudsman, there's always this discussion, do we do individual complaints or do we do systemic? It's a very artificial discussion when all is said and done, because it's in the individual complaints that the systemic problems are revealed, and it is the way you go about complaint investigation and resolution.

If you find you've got three complaints on something that reveal an artificial barrier there against youth or against people in the north, and you can effect a change in one department, in all departments, that does an incredible reparation. I think that is where the potential is. But I believe that as long as we're examining the commission, micro-examining them on backlog investigation and so on, it's not going to have the chance to develop that expertise, to show that creativity.

The other thing I want to say is that this organization was created in 1960 with 1960 legislation. Incredible changes have happened, in the last five years never mind the last 30, and we need to make sure we've got an institution and processes that equip us for the next century. That's where the challenge is for me and that's where the challenge is for the commission. I think they've got the best ideas, the best resource and all the reports that are there. The task force report, now called the Cornish report, has 88 specific ideas. I think those should be considered.

There are lots of ideas out there. I think it's a matter of having a macro look at the issue, deciding what is important, what we are prepared to support, and moving forward with it. I don't think asking the commission to get along under the current circumstance is going to solve the problem. I've indicated some of the statistical problems that I see that will not help them, and it won't help them either to continue to struggle with a middle kind of bulging case load and me investigating delay complaints about it. That's not going to help them. We need a much broader reform, and that's really my message today. Is it doable? Absolutely. I think it's essential.

Mr Mike Cooper (Kitchener-Wilmot): I have a couple of short questions. First of all, in your complaint process, when a complaint comes in, do you contact the person and tell them to stop the process that they're in?

Ms Jamieson: We make sure that we don't accept complaints unless they have exhausted their avenues of appeal.

Mr Cooper: Okay. And here's one of the problems. As you know, the standing committee on government agencies has just finished its review of the Human Rights Commission and is doing the report right now. In their process at the Human Rights Commission, when a complaint comes in, same as you? Have they exhausted all avenues before the complaint is picked up by the Human Rights Commission?

Ms Jamieson: I believe they have a section in the code that allows them to refer complaints to other areas. If there is another appropriate agency, they have the opportunity to do that. Whether they do that or not on each and every case, I think you might want to put that question to them next week.

Mr Cooper: Here's the crux of the whole thing. What we're seeing, and it came out there, is that people put a complaint in to, say, WCB, the labour relations board, press council, whoever, and to the Ombudsman, and the Human Rights Commission, and the environmental commission and—who else do we have?—the Pay Equity Commission, the Employment Equity Commission. So you have all these commissions working on a single person.

Is this part of the problem that's causing the backlog, that people will go to one part, exhaust that, it doesn't work, so they go to another commission and try that? Is that causing a major backlog in the Human Rights Commission? It seems like a lot of things from other places that are more appropriate, where they are in some sort of process, are eventually also going to the Human Rights Commission.

Ms Jamieson: One of the issues I think I mentioned in the priority areas that need to be dealt with is a kind of proliferation of agencies. That is one area that I am concerned about. I think it's confusing to the public. But I can tell you that if they come to us, we let them know that if they are proceeding before the courts, and I would add the courts to your list, or if they're lobbying politically, and there are a couple of other sort of options as well, they have to make a decision, that it is not an appropriate use of my resources or the public's resources to duplicate somebody else's job.

Where I will vary from that is if, for example, in this case they were before the Human Rights Commission. They came to me. They didn't come to me on the subject of the final outcome, whether the Human Rights Commission found discrimination or not; they came to me on the issue of delay. There I will get involved if it's taking too long, the process that they're at. But we try very hard not to accept—hopefully everyone declares to you when they come how many places they've gone. There's no magic computer to check that.

Mr Cooper: This is a problem in our offices, because they come to us with a complaint and I find out that the very next day they've gone to the Ombudsman. Once it's in the Ombudsman, my constituency office staff get out of it because they no longer belong there. We are criticized for that because people want an answer now and we can't give it to them today so they go straight to the Ombudsman. I was wondering if in the Human Rights Commission, that was part of the backlog problem.

Were you invited to the standing committee on government agencies on the investigation of the Human Rights Commission?

Ms Jamieson: The Chair contacted me and, knowing that I had this report before this committee, I think it was felt appropriate that this is where I would come. I don't know if there are ever times when committees sit jointly.

**Mr Cooper:** No. This was discussed before we started this.

Ms Jamieson: So I'm left with a report in front of one committee and another committee looking at—

Mr Cooper: Thank you.

Mrs Karen Haslam (Perth): Actually, that's okay because ministries go before all the committees and sometimes they overlap, so maybe you should investigate that possibility for you.

You mentioned systemic things. We have a copy of the case times and we have a copy of the case load staff that were done for us. So when you mention systemic barriers, what do you use as indicators, seeing the problem as a systemic problem? Three from the north means it's a systemic barrier to northerners, three on youth: What indicators do you use to say whether you feel it's a systemic barrier or not?

**Ms Jamieson:** We have our own in-house definition of what is a systemic issue.

1050

Mrs Haslam: Could we have a copy that?

Ms Jamieson: I think we can make that. I don't have it with me.

Mrs Haslam: No, no, no. I'm just meaning that if you could get us a copy of that, I think that would be very helpful to us.

Ms Jamieson: If that would be helpful to the committee, sure, I'll undertake to provide that.

Essentially, if you're looking for a definition of what is systemic, what we look at is, to what extent do we find a problem that may well appear on its own to be quite benign but in fact operates to a disadvantage of a particular group of people?

Sometimes you'll see it with one complaint. Sometimes you'll see it with 100. That's why I ask all of my staff to be on the lookout each and every complaint that comes into the door for that dimension. That's certainly one of the central things we're aware of, because as opposed to looking at 30 and finding the same thing, we should be able to look beyond, with our expertise, and see, if it's a problem for one person, is it really something that the ministry or the body involved is doing that ends up providing a barrier to a particular group of people? Numbers aren't always important in that. Sometimes you can see it with one, but then you can prevent 1,000 if you fix it.

Mrs Haslam: Right. I'd be interested to see that thing.

Also, when we look at the stats, and we're talking about delays here, what do you think would be a normal number in terms of case processing at the Human Rights Commission? Since you're working with delay and we're

looking at the stats, what do you consider is normal in terms of the case load, in terms of the age of the case load or in terms of the length of that investigation or number of unassigned cases?

Where is that balance where you maybe would have said, "Yes, it's a little high, but I understand that you're dealing with new legislation, you've got a new process, you've got a new person, you're trying to get it under control" and so on and so forth. Where is that balance that you see as being normal versus your report saying there is a delay?

Ms Jamieson: In looking at and doing our own investigation and our own report, we in fact used the commission's own standards. I didn't come in and impose them from outside; I asked them what's their standard. What we found is that they were not able to meet their own standards, their own goals, and as I said earlier, I think the body involved is best equipped to tell you how long something should take, and if it's not able to do it in that period of time, then you know you've got a problem.

The other points that I've drawn about a middle kind of bulge and so on, you can see just by tracking the investigations it'll go down for a while. Any complaint over sort of six months and under kind of three years, you can see that, gee, in 1990, 1991, 1992 they went down, 1993 they went down, 1994 they're back up.

If you look at the front end, maybe you're doing a dynamite job at the front end and a real concentrated effort on the old ones, but if you're not dealing with the middle bulge, pretty soon it's going to be old. That's where I can see, just by looking at the pattern, that some concentrated effort needs to be spent there.

Mrs Haslam: Actually, that's something this committee looked at when we looked at the report and the overview, and I think you're very, very correct in saying that.

Did you find that the Human Rights Commission, when you re-evaluated, when you went back in and said: "Well, yes, you've done a really good job on the case load, on the old case load. That's what I asked you to do. I asked you to look at the delays." We were talking about the delays.

Now the concern is that all the resources—when you looked at it again, did you find that they put all the resources on looking at that problem around the delays and did you then see a problem because they took some of those resources from other areas?

Ms Jamieson: I think I should be clear in saying that delay doesn't always mean a case is really an old, old case. Delay happens when you look at a file and see that there's been little or no activity on it for a period of time.

Mrs Haslam: What period of time?

Ms Jamieson: I looked at cases that were anywhere from a year to nine years old, and we found in many cases a period of months where very little activity happened. So that speaks to what was going on with the file. We found it in old files and in relatively young files at that time.

Mrs Haslam: Could I follow this for just a little

longer? What kind of activity, then, would you expect? A letter to the person who had the case? Another call to someplace? Was the lack of activity because they were waiting—I've got things on my desk that have not had a phone call in two weeks and that drives me crazy. I have a file called "Calls to make," and I go through that file and I know that in my own office, my case workers say: "I'm still waiting for the information. I'm still waiting for somebody else to get"—we all have those cases where you're still waiting for the ministry to get back.

What kind of activity and what reasons were there for that lack of activity?

Mr Frank Miclash (Kenora): Eight months?

Mrs Haslam: I know, eight months. That's right. Sometimes letters from ministries take eight months. In a huge ministry that's not uncommon. They try to do it as quickly as possible, but sometimes that letter is a long time coming. In the meantime, I'm calling on a regular basis. Is that what some of the problem was in the inactivity, or was it that they just didn't have the resources or the time to make those calls on that file because their files double my file?

Ms Jamieson: I think that in any of the investigations we try to do, the findings we come up with are applying a reasonable standard. I know we have files, we have investigators; we know what's a reasonable period of time. When it's extended months with no activity, I think that's pretty hard to justify. That is what we found and tried to apply a standard that was reasonable under the circumstances. If we could find no reasonable explanation for work not being undertaken, that's what we concluded.

Mrs Haslam: When you found no reasonable reason for the work not being taken, did you then put that down to, as I hear you saying, the need for an overhaul or looking at the systemic workings of it or versus the resources? That's a question that we as a committee have got to look at. Are you saying that the inactivity is because of some management or case load problem within the structure that has to be addressed by a total overhaul, or are you looking more at the resources they have to deal with and the people they don't have and the influx of cases?

Ms Jamieson: I don't think it's as simple as saying one or the other. I really think they're both part of a larger equation, along with the other things I listed that are needed. We're not going to deal with backlog or delay other than in a much broader context. I think the system for handling complaints internally needs to be looked at. I think the Human Rights Commission itself has made some very positive steps, which require follow-through. I think there are some adjustments that could be made to the code to make the system a much more streamlined system.

I guess my message here this morning was a much more macro look at it. I don't think a few more dollars are going to solve the problem. I think it's a genuine, broad overhaul that will be required. If I thought tinkering would fix it, I would have said so. I did not think that was the case. But I see some positive steps being taken which I believe should be supported and supplemented.

**The Chair:** Now it's time for the official opposition to ask questions.

**Mr Miclash:** Ms Jamieson, I always appreciate your appearances here before the committee, as you bring a good amount of insight in terms of your presentations.

I just wanted to pick up on something that Ms Haslam was talking about, and that, of course, has been the delays and backlogs. Are there any specific examples you can give us in terms of how the complainants have suffered because of a delay in taking care of their particular case?

**Ms Jamieson:** Do you mean suffered in sort of a monetary or a tangible way?

Mr Miclash: Both, yes.

Ms Jamieson: I don't have that right in my brain. I can tell you that I believe that if you don't have a remedy available to enforce your human rights, not only does that individual suffer, we all do. I can tell you that of the 38 complaints I initially investigated, a number of them remain outstanding, and I started in 1989. Suffering can take many forms: lack of access to a remedy; perhaps they lost their job as a result of discrimination. There are all kinds of variations on the theme, but I don't have a particular example to table with you today.

1100

**Mr Miclash:** You indicated that we're working here in terms of the legislation. I think you mentioned it was created in 1960, under 1960 legislation. What are some of the legislative reforms you would see made through legislation that would help out in terms of correcting the problem of delay?

Ms Jamieson: There are a number of people who have done some very good creative thinking on this subject and have considered views in front of the Legislature at this stage. I'm not sure I'd want to second-guess them, just to say that the code itself, I believe, needs to be brought up to the 1990s standards. I believe there are process changes that need to be reflected in it and I believe there are ample ideas and detail available out there which should be given a considered view. It would be very presumptuous of me to sit here and give you a kind of detailed list of code changes that would be required. I hope the Legislature will put its mind to that and make changes. I think reconciling what's the role is number one and I've said some of the other things that I think in a broad way need to be grappled with.

Mr Miclash: You mentioned both the Lewis report and the Cornish report. These are some of the reports that are in. What are some things that you see in these reports that jump off the page at you in terms of their recommendations? What are the things that come to mind from both those reports?

Ms Jamieson: Once again, I think there was an incredible amount of public input into both: ideas, reallife stories on the problems, real creative ideas on changes, process ideas, mediation ideas, ideas on having equality rights centres. There are any number of suggestions. The question is, to what extent does the Legislature want to alter the Human Rights Code and in what direction? To what extent does the Legislature want to

change the whole regime for human rights enforcement? That question I believe needs to be faced first. Then, how do you do it? As I've said, there's quite a smorgasbord out there of wonderful, well-thinking, well-thought-out ideas.

Mr Gary Wilson (Kingston and The Islands): I'm glad to see you here again, Ms Jamieson. I'm interested in a couple of things here. First of all, in your own study of the Human Rights Commission, you did, at a point, I think in 1992, determine that changes had been made, that you thought there was enough improvement there that you could close the file, if I recall correctly.

Ms Jamieson: That was the fall of 1991.

Mr Gary Wilson: I have a letter here in 1992.

Ms Jamieson: I see; 1991 was when the Premier responded on behalf of the government, then I had another look at 1991-92 results—you're quite right—so it was the spring of 1992 that I said even further monitoring was not in order at that stage. I did see improvement.

Mr Gary Wilson: Right, so what I'm thinking is that it seems the commission can renew itself under its mandate—at least in 1992 that was your assessment. You wanted to clarify that?

Ms Jamieson: I just wanted to say that sadly it was short-lived, because when I looked at 1992-93, I saw that we were slipping back and it's then that I came to the conclusion that much broader change was required, that this could not be fixed by tinkering. That's why I made the report to the Legislature at that time.

Mr Gary Wilson: It comes down to, I guess, the definition of "tinkering" and what are kind of substantive changes, because I think you're aware that the commission does think it's undertaking some substantive changes that can lead to improvement, and we see some evidence of that in the figures as far as clearing of the backlog goes.

For instance, I have a table here prepared by the legislative counsel that shows that the number of cases from 1993 to 1994 has declined fairly substantively, and it would appear that by some of the changes that have been made, the backlog is being addressed.

Ms Jamieson: Mr Wilson, I'm looking at a case load by age group as of March 31 chart here, and what I see is that in fact case load is rising. I see from 1990 to 1991 it rose, 1992 it dropped, 1993 it dropped, but 1994 it's back up. I see the ages of the cases. While there's some considerable attention on the older cases, I am a bit disturbed by the number of aging middle cases, and I would describe middle as being over six months and under three years.

While a terrific job may be being done at the back end and the front end, if you've got a middle glut that's aging—and even that glut doesn't take into account the early settlement initiative cases, the reconsideration at the board of inquiry, so you've got even a bigger number somewhere in the case load—I am not hopeful that without some determined, sustained change, forward movement there—we may be back in a problem and that's why I'm raising that. I am hopeful with the signals I see coming from the commission, but I think the magic

word is "implementation," follow-through, and I think they needed to be supported in that.

Mr Gary Wilson: To emphasize the implementation and follow-through, how can that be achieved with the present structure? I'm thinking here of a report titled Organizational Improvement Initiatives at the Ontario Human Rights Commission, dated May 5, 1993.

Ms Jamieson: This is the material we received just last Friday, but I am able to say that again I see some very positive ideas in that report. I see some determination. I am encouraged by it. I should also, though, say that I've seen case management ideas in the past. "Follow-through" is the key word here.

Will they be supported? I'm prepared to support that. I think that alone, however, in the longer term will not do the trick. I think there are things beyond the commission itself that it would like to see done. There are changes internally that it knows best, and it should be allowed to do it. There are changes outside, legislative and so on, that it too would like to see done, and I'd like to see those supported.

Mr Martin: I'd like to follow up a bit on Mr Wilson's line of questioning and also continue from my previous foray, and that's the question of how we deal with the tremendous onslaught of requests from people to have their rights upheld. Given, as I said before, that we have ourselves brought on some good number of new initiatives and the pressure that we'll face, I suggest to you, as Mr Wilson did, that the commission is dancing as fast as it can with this and trying to do the best it can, and in fact did make some progress and was then all of a sudden faced with a huge increase in requests for more information, which causes stress. As I said before, you and I have experienced that.

The question I have in light of that is, first of all, would you agree that a good part of the problem that's happening now is this huge increase in the amount of stuff that's coming in, and is there anything you might suggest we might do as a government as we introduce new pieces of legislation that will ultimately cause this kind of reaction that would make it more playable out there? I'm talking about perhaps some improvement to the communications we do, the public education we do.

You spoke earlier about the commission itself needing to be more proactive in terms of that kind of thing, yet when you gave some of the things that needed to be addressed and reconciled re the role of the commission, you talked about advocacy or investigation. Where does this other piece fit in and who does that and who does that best? I use for an example the employment equity piece that we brought down. We included with that piece a commission that will deal with complaints. Will that be helpful?

Ms Jamieson: Mr Martin, you have raised a number of issues and I'll try and respond to each of them as best I can. First of all, on the advocacy or educate question I've said that I think one of the issues that needs to be settled is, what's the commission's role? Is it the advocate for the complainant against respondents or is it an

independent investigative body?

I don't think you need to be an advocate to do the public ed. In my office, and I'll use myself as an example, the Ombudsman is an investigator. It's an independent, objective reviewer of a complaint and tries to find a solution if the complaint is supported. Part of that job is doing public education. The public needs to know what we do, how to access us, when to come to us and so on. That doesn't mean I'm an advocate for every complainant who walks in the door. I am not. I am the independent, objective, fair investigator. If I'm an advocate for anything, it's a fair solution where there's a problem.

In this case, what the commission is struggling with is an image of being an advocate for the complainant against the respondent as well as the investigative, independent body. They're seen at once as judge, jury and still kind of defence counsel. That's hard. That's a tough thing to do and I think that needs to be reconciled, but I don't think that if you're purely an investigative body, that means you can't do public ed. I think you're obliged to if you're providing a public service. We all have to do public ed, but I think you have to know what you're educating the public about. What's your role? What are you? So that's one thing.

Secondly, you talked about the influx of complaints. There's no question in my mind that as we talk more about human rights issues in this forward-looking province that we're all part of, people know more about their rights. They expect that they will be respected. They are speaking out as they never have before. I can just look at my own complaint load and tell you. People are demanding equity of service. So there's more work out there for all of us. I don't think that's necessarily a bad thing, though I think it is a challenge for all of us. Yes, there's more demand on the commission, even more reason why its processes need to be streamlined, because I don't see the tide going down. On the contrary, I think there will be more.

One of the things we can do is make it clear to people which agencies do which job, and make it very clear. Where's there's overlap, deal with it. Where there are gaps, deal with that. But make it much more easily understandable for the average person who's got a problem to know where to go and when. That's key.

Mr Martin: The question about the Employment Equity Commission and the complaints piece of that: I asked you if you felt that is a helpful thing to be doing. Here's an act that is obviously going to create some demand in terms of redress. We've put in a piece that will give people some access to that. Balance that with simply saying, "Use what's there already." Will that be helpful?

**Ms Jamieson:** I'm not sure I understood the question. Is the piece you're talking about the obligation to educate the public?

Mr Martin: No. The piece that the commission has to actually investigate complaints. There's a piece in the Employment Equity Act, with that piece, that gives people a forum for redress, that doesn't take it into that bottleneck we call the Human Rights Commission. It's at

the Human Rights Commission at the moment because of the ever-growing case load that's out there. Is that a way to go?

Ms Jamieson: I have to be frank in saying that I'm not sure myself. I'm not sure if the public is where the line is between what's appropriate for the Employment Equity Commission and what goes to the Human Rights Commission. I think that is one area where it could be clearer. But I have not done an analysis of the Employment Equity Commission and I wouldn't propose to speak about it today without doing some homework. I hope that's okay.

Mr Martin: One other question, if you don't mind, is the question of public education. You had mentioned earlier that was going to be an important element of any redress of this issue. But I hear you saying your definition of "public education," particularly re your commission, and I'm asking you, from that, are you saying that the definition of "public education" for the Human Rights Commission is one of simply making sure that the public know what it is you do as opposed to public education around the question of the issue of human rights?

Ms Jamieson: I think you're quite right. It needs to go beyond that. I think its mandate is to be proactive and educate on the whole subject of human rights. I also think that my mandate is to educate the public on issues of fairness. With each of us, part of the job is to let the public know what you do and how to get to you. The other part of it is to talk to them about standards, what it is you're about, what you stand for, so that they understand what the expectation should be, who they're dealing with, when they walk in the door.

Mr Martin: I know myself that when I go out on behalf of my office in the Sault to let them know what we do, for weeks after I'm inundated with people from that particular meeting who see me, and then my problem that I'm just about getting my head out from under becomes all-encompassing again. Anyway it's a conundrum. Is that a good word?

Mrs Haslam: You talk about streamlining processes within the Human Rights Commission. You talk about education and advocacy as part of what you're looking at.

The Cornish report recommends substantial and fundamental reform to the role of the commission, and it goes beyond addressing just the issue of delay, which is what this report is about. Are there any changes that you think we could lift from the Cornish report that might specifically address the delay problem, or do you believe that it would be unwise and we should go for a fundamental change, as the report recommends? You were looking at the delay. I have another question about timing. I can get an answer to this thing: Is there something in the Cornish report that we could lift out that would address the concern of delays?

Ms Jamieson: Without trying to deal with all the recommendations that are in the Cornish report, my own personal view is that it would be tempting but would not have very long life if we attempted to deal only with the delay issue in a little piece and internal to the commission. I think the commission and the public and all the review reports are asking for something beyond that.

What the something is, how it will work, how it will be implemented, I really think should be a plan arrived at with the commission's full partnership and involvement. They know best, and I'm hopeful that they will be invited and that there will be an opportunity to work with them. That's my philosophy as Ombudsman. I investigate complaints, I find things that are wrong at times and I try to work with the agency to fix them. That's the best way to make change.

Mrs Haslam: I agree, and that brings me to my other point, which is timing. A major reform of the Human Rights Commission in changing legislation can be very time-consuming, because, as you say, it's not something you just bring into the House and, "There you are; work with it." You have consultations with the organization, you have consultations with the people who are affected, you have consultations in the communities that would be using it, and that all takes time.

1120

So what are the potential consequences of delaying reforms six months to a year in order to have time? Because we also know that the commission has some new proposed initiatives. They are doing some streamlining; they are looking at changes in their case load and their management systems; they are trying to address the concerns that you have raised.

You've come back in and said it's not working because you only—I can see the cases at the lower end and the longest cases being closed, I can see an increase in the number of cases coming in, I can see a potential problem in the middle in the case load, but they again have had other proposals coming in saying, "Here's what we're proposing to address those concerns."

Should we give a little more time to look at the impact of those proposals before we go into a major overhaul, or what kind of consequences are we looking at in a sixmonth-to-a-year delay in that area?

Ms Jamieson: I'm not sure that it might not be presumptuous of me to let you know what I think, but you've invited me; I'll answer the question. I think there's been an incredible amount of consultation, public input, public hearings. That's why we have a stack of reports on the Human Rights Commission. Timing, how long will it take? That's in the hands of the Legislature itself.

Mrs Haslam: That's really my concern, if I can interrupt you for just a minute. That's my concern, because we all know that drafting legislation is not done by one person or by one ministry. There are consultations around drafting legislation, introducing it in the House, doing second reading, getting it to a committee, having it in a committee for a number of weeks or over the summer or over the spring or over the fall, back into the House. Clause-by-clause can take weeks through committee work; back into the House for committee of the whole, if necessary; third debate. Even that is an extensive amount of time. So even if your bottom line is that we need the overhaul, it's not going to happen in two days or two weeks or two months.

Ms Jamieson: Right. I guess my point is, Ms Haslam,

that yes, it will take time to implement, no question about it. I'm not naïve when it comes to the legislative process and I think it does take time. If we don't do it, I think one has to look at what the consequences will be.

Is it acceptable, the current record, the length of time? Is this acceptable enforcement of human rights in Ontario in 1994? I think no one finds it acceptable, including the commission. They are making internal changes that are necessary, and I am encouraged by those, but they need to be supported. If that's all that's done, I'm not sure you won't find us in a worse situation a few years down the road.

So if it takes time to do the overhaul, to put in place the legislative framework we need for the next century, for our children, for the new people who are going to come to Ontario to make it their home, I would want to start now.

Mr Gary Wilson: I just have a question, to ask you to elaborate on what you mean by streamlining the Ontario Human Rights Commission in its work. Could you just mention the main points you have in mind there?

Mr Jamieson: Just to say, Mr Wilson, that a number of those changes for streamlining I believe have been initiated and are being initiated and are presented in the documentation, some of it, that I received last Friday from the commission in preparation for today. I believe that there are others that could be considered, and I hope that attention will be brought on the middle group of cases, for one.

Mr Gary Wilson: Are you suggesting there have to be different kinds of things done, depending on the case?

Mr Jamieson: I think one area that holds much promise is the identification of systemic issues by all staff. Is that kind of approach the norm approach in the institution as a whole? I think that will be a very effective tool which I commend to the commission.

**Mr Gary Wilson:** Sorry, I missed that word. The what approach?

Ms Jamieson: The systemic approach to investigations.

**Mr Gary Wilson:** No. I thought you said the "normal" approach.

**Ms Jamieson:** I said I would like to see that be the norm.

Mr Gary Wilson: The norm. Okay.

Mr Bernard Grandmaître (Ottawa East): As you pointed out, new legislation or just fine-tuning the present legislation is time-consuming, and I think you repeated yourself twice that you need some support, and I agree with you. Do you have the feeling that it's not a priority for the government and this is why you're not getting this support?

**Ms Jamieson:** I believe I said the commission needs the support and it remains to be seen what the priority is.

Mrs Haslam: Welcome to this non-partisan committee, Mr Grandmaître.

**Mr Grandmaître:** I'm sorry. I got interrupted, or you were interrupted.

Ms Jamieson: Only to say that it remains to be seen

what priority the Legislature as a whole will give to this. I commend this subject to the Legislature as a whole for its attention.

**Mr Grandmaître:** Do you have the feeling that it is a priority of the government to do it?

Ms Jamieson: I think that remains to be seen. I am looking to the Legislature as a whole to take the steps necessary in partnership with the Human Rights Commission so that it can enforce human rights in this province effectively.

**Mr Grandmaître:** So what you're telling me is that you haven't seen this kind of willingness on the part of the government since you have been there.

Ms Jamieson: Certainly I saw some very encouraging responses in 1991 from the Premier. I was hopeful that would do the trick. I think much broader reform is necessary, and that will take the support of the whole Legislature, I believe.

**Mr Grandmaître:** I agree with you, but usually legislation is, let's say, government-driven and I'm sure that I can't speak—

Mrs Haslam: Opposition-driven.

Mr Grandmaître: No, that's wrong, as you know. I know our Conservative colleagues are not here this morning, but I'm sure you would get this kind of support. I think it's got to be government-driven and you would have the support.

**Mr Martin:** If the presence of the opposition here this morning is any indication of how important this is, it's not very hopeful.

**Mr Grandmaître:** I can't speak for the Tories, and don't get me mixed up with a Tory either.

Ms Zanana L. Akande (St Andrew-St Patrick): Let me first apologize for being late but also tell you I've read this. The problem around the Human Rights Commission, first of all, I have to say, in terms of the speed with which it deals with the issues, is not a new one; it's a very old one that's being brought to this non-partisan committee. So we should be able to address it from the point of view that it's been around a long time and here we are again. I remember on the outside writing letters about the speed with which things were not dealt with. I suspect that on the outside I'll still be writing letters about the speed with which things are not dealt with.

I am always in favour of consultation. However, I think that consulting again around issues that have been identified by many different groups seems at best redundant, to say nothing of expensive. I'm really making a comment and then a question. I really am wondering myself if anyone, especially you, can give me any reasons or recommendations or ideas or some sense of why it should not be now that this is taken on. I ask that question of you and of my colleagues and of the opposition and of anyone else whose ideas may be creative in that area.

Ms Jamieson: I said earlier that I felt the time for study and reporting and investigating and criticizing was over. I think the time to move forward is now. I think that the commission itself needs to be supported in the efforts it's making. I think it needs to accept responsibil-

ity for its past, its present and its future and be supported in getting there, both in its internal initiatives and in creating a framework for it to move to the future. We need a body there that'll take this province to the next century and be at the forefront of human rights protection in the next century for our grandchildren. I think the time to start is now.

1130

Ms Akande: Do you believe that the initiation of other commissions, pay equity, employment equity etc, is in fact seen as perhaps in some arenas an alternative to the Human Rights Commission and therefore there'll be a lesser need for the Human Rights Commission to be involved in that entire plethora of issues?

I ask that because that has been said to me, "Oh, well, you know, there are some issues that used to go the Human Rights Commission, but now they won't be going there because there's the Employment Equity Commission, there's the Pay"—you know.

Ms Jamieson: One of the issues that I spoke to earlier was a proliferation of agencies, which I think is a concern. It's a concern and it's confusing to the public. I don't think the public knows what is supposed to go where and we spend a lot of our time helping them to understand the maze of government. I don't know what the message is to be gained from the creation of other agencies. Those issues must be dealt with, yes. That's a very positive message, but how we're going to deal with it, how we're going to make it easy for the public to access these things, will they understand it, I think that issue has to be dealt with because it's not clear right now.

Ms Akande: It becomes extremely important—please tell me if I'm leaning on time. It becomes extremely important when you recognize that with the Employment Equity Commission—in the legislation, employment equity, we made certain that people still had access to the Human Rights Commission, should there be that need. So it could be a two-step process. I'm not saying that it always will be; I'm saying it could be. And yet that is often given as a reason why the Human Rights Commission will be called upon less often to deal with issues: because these other commissions do exist.

Ms Jamieson: I'm not sure about the question.

Ms Akande: I'm not even sure it is a question. I'm just bringing it to the table to say there is an additional concern when you say that not only can people go to the Employment Equity Commission but they can also—I'm just using that one as an example—go to the Human Rights Commission on the same issue for other reasons.

Ms Jamieson: I think I said a little earlier that it's not clear to me where the lines are and I dare say it's not clear to the public where the lines are. That's something that we have to come to terms with as a society. What are we going to provide? Which rights are we going to respect? How are we going to enforce them? What's the priority?

We're very rich in this province with agencies and resources and rights and it's a constant challenge for us to make it clear to people when they come to us where do they go for what. That's one area that still isn't quite

clear to me. What is clear to me is that there are priority matters and we're spending time and attention on them but I think it may well be a concern to a number of the agencies out there that there be some clarity as between them and as among them. The agency heads themselves, I'm sure, will tell you that.

Mrs Haslam: I'm going to have three brief questions. Do you continue to receive complaints about delay in the Ontario Human Rights? How do they compare with the numbers that you used to receive before you got into the investigation of it in 1989? And how does the number of complaints you receive about that commission compare with the number you receive concerning other government agencies that might be similar?

**Ms Jamieson:** I will just quickly run down the numbers, but say to you that, yes, we do. That was one of the issues that I outlined as of continuing concern for me. In 1989, 29; in 1990, 53; in 1991, 45; in 1992, 64; in 1993, 58. They do continue at about the same rate.

Mrs Haslam: Given that they've increased about 50% of the cases that have—according to one table, it showed that the increase in the number of cases at the Human Rights Commission has increased by about 50%, I thought. Anyway, how does that compare with other crown, government agencies?

Ms Jamieson: I think it is higher, but I think there is probably a factor that needs to be taken into account. That factor is that it was widely known—this has received some publicity—that the Ombudsman was doing this investigation, that a report was tabled. That tends to advertise for complaints on its own. I can't tell you what percentage we should chalk up to that and what percentage we should chalk up to—I can only tell you that the numbers reflect that it's about continuous; the same numbers.

Mr Cooper: This is probably a question that's better addressed to the Human Rights Chief Commissioner but, from your perspective, I know when people come to us, their problem is specific, individual and, as far as they're concerned, never applied to anybody else. In the Human Rights Commission, is there a lot of precedent-setting, such that when somebody comes in, they could say, "That's exactly the same as..." and they keep a list of that so they can see the specific area that needs to be addressed?

Ms Jamieson: I agree with you, Mr Cooper, that that is a question you might want to put to the chief commissioner, but I will tell you what we do to deal with that at my office.

You're right: The person who comes in the door wants their issue dealt with and we attempt to do that. Sometimes you can deal with an individual's problem very quickly but know, when you've heard it, that it's an indication of a broader problem. We will then split that off, deal with the individual's concern so that they are satisfied and they're not held up, and we will take the other piece that's a broader issue, maybe a systemic problem, and deal with that in a broader investigation.

That seems to be what the public wants. They told us in a survey about two years ago that, yes, they want an

answer for them, but they really want to know that it's not going to happen again to anybody else.

Mr Cooper: What happens once you've discovered that systemic problem? What do you do with it?

Ms Jamieson: I do, then, on my own motion, an investigation, which may be broader in scope. We'll then tailor the investigation to deal with the broader question that seems to be there. We might look at one department, we might look at several, we might look throughout government; it really depends on the issue.

Mr Cooper: You report directly to this committee, so there is direct access to get changes made. How about the Human Rights Commission? Do they have direct access anywhere or do they have to solve the whole problem before it comes back to us as legislators to change things?

Ms Jamieson: You will find that while I report to the Legislature through the Speaker, the Human Rights Commission does have a relationship with one of the ministries. That's where it reports through: the Ministry of Citizenship.

**Mr Cooper:** But you try to solve it, address it or identify it and then bring it back?

Ms Jamieson: My mandate's very specific and the process I follow is set out in the act. The only time I bring it to the Legislature is if I cannot convince government to take the appropriate steps to respond to my recommendations. That's the only time I get to the Legislature on a subject.

**Mr Cooper:** Okay, we'll take that to the human rights commissioner when she appears here. I think that would be best.

Ms Jamieson: Yes. 1140

Mr Martin: I want to continue on with somehow trying to put this into some kind of context so that we can understand if what we're proposing here is doable or not, or realistic. You suggest that we bring this to the whole Legislature for view. I guess in bringing it there, we as politicians in that political arena need to consider a number of things. One of them certainly is the issue of the climate within which the Human Rights Commission now operates, which is one of tremendously difficult economic challenges, people out there very worried about their circumstance and seeing, if I might say, bogeymen behind every tree.

I guess I would like you to respond to what impact that has on the case load that's there now. When the economy gets better and people get back to work, do you see any lessening of the pressure?

The other question I have is, given the very interesting, to say the least, campaign waged by the Conservatives in Victoria-Haliburton just recently, what impact does that kind of politicking have on the whole question of how we deal with human rights in this province and the issue of, number one, people feeling free to bring them forward feeling free to ask for what is rightfully theirs and the other question of the public being whipped up to some degree into a frenzy of seeing anybody asking for their human rights as a threat to a way of life that we've come

to know as sacred in this province, or something to that effect?

Ms Jamieson: I think we are at a time when the economy is suffering, where we are all seeing an increase in complaint load. I certainly am. I think that, yes, part of that is the economic circumstance. Part of that, though, is also that we are more aware than we ever have been before of our rights. Part of that is we are more able and willing to make our voices heard when we don't get the standard of service or treatment that we're entitled to. I think those are all parts of the equation.

I think when you find that the economy is bad, people are scared, and we all are, and are insecure about the future, we all look for comfort. Sometimes that comfort is found in the extreme point of view. We see that, and that creates its own cycle, because then you have another extreme develop to respond to it. Those all manifest themselves in behaviour that we might not always find acceptable and might translate into complaint load. I don't know how much of the increase in the commission's case load you can chalk up to the times, the extremism. Probably some of it.

The other matter that you talk about, about a particular riding or campaign, I'm not sure that it's appropriate for me to comment on that.

Ms Akande: May I suggest too that there are other

advantages and disadvantages that occur when the job market is tight or when there are many jobs. I think that when there are many jobs out there, another problem occurs. Correct me if I'm wrong in this, but it would seem to me if a person lost their job and had even a legitimate human rights case, if it was a simple matter to get another one, the likelihood of their taking it to human rights might be less than in times when there are not as many jobs out there. But then that speaks, to me, to an even greater need to hurry up the process.

Ms Jamieson: I would agree with that. I think there is certainly that element there as well. Some people may be less likely to make an issue. Let's remember, we have many people who are making Ontario their home who have come from countries where complaining is not a good thing to do. I deal many times with people who—we know that the level of complaint we're getting is just representative of what's out there. I suspect that's absolutely true for other bodies, like the Human Rights Commission. I think the times do draw a particular landscape for a lot of why what's happening is happening to all of us.

The Chair: Thank you, Ms Jamieson. If there are no more questions, we can adjourn this meeting till next Wednesday at 10 o'clock, when we are going to meet with the commissioner of the Human Rights Commission.

The committee adjourned at 1146.

#### CONTENTS

# Wednesday 4 May 1994

Ombudsman special report on the Ontario Human Rights Commission	B-27
Ombudsman of Ontario	B-27
Roberta Jamieson, Ombudsman	

#### STANDING COMMITTEE ON THE OMBUDSMAN

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<sup>\*</sup>In attendance / présents

B-7

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Wednesday 11 May 1994

Standing committee on the Ombudsman

Ombudsman special report on the Ontario Human Rights Commission

Chair: Tony Rizzo Clerk: Todd Decker Journal des débats (Hansard)

Mercredi 11 mai 1994

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 11 May 1994

### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 11 mai 1994

The committee met at 1020 in room 151.

OMBUDSMAN SPECIAL REPORT ON
THE ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mr Tony Rizzo): I call the meeting to order. Today, we continue the meetings of the Ombudsman committee. Last week, as you know, the Ombudsman made a presentation to the committee of about 15 minutes and then we followed up with questions. We are going to proceed the same way today with Ms Brown.

ONTARIO HUMAN RIGHTS COMMISSION

Ms Rosemary Brown: When the Ombudsman tabled her report on the Ontario Human Rights Commission three years ago, she contributed to a significant body of reports about the commission and the administration of human rights in Ontario. The fundamental concern of those reports and the fundamental concern of this committee is the ability of the commission to provide timely and just service to the people of this province.

If, in the enforcement of human rights, the reputations and interests of the parties to a complaint are allowed to languish due to delay and protracted investigations, if the enforcement of human rights involves violation of due process and the rules of administrative fairness, if the enforcer of human rights lacks or flouts clear public accountability, then not only are the principles of natural justice offended, but the inherent value of the people involved is radically undermined and the primacy of human dignity is denied.

The work of preserving the public interest in human rights is difficult, exacting and complex. As our society has matured, this work has become more difficult, more exacting and more complex. The commission's long history of delay arose as the challenges inherent to preserving human rights were magnified by deficient and poorly deployed resources, a lack of comprehensive staff training and development, inadequate use of technology and by procedural aspects of the Human Rights Code itself.

The body of reports which exists about the commission attests to the sheer amount of thought which has gone into the problem of delay. Taken as a whole, they set out three basic tenets that must be followed if the commission is to succeed as an efficient, fair and effective enforcer of the code and as a foresighted and reasonable advocate of the public interest in human rights.

First, single-issue solutions are not enough. We have abundant evidence of the fact that a case management plan cannot stand alone. In order to be realistic and effective, the strategies which the commission uses to

manage its case load must be rooted in a lean, vigorous and inventive organization.

Without undertaking the arduous work of getting the basics in order, like eliminating unnecessary bureaucracy and developing the knowledge, skills and abilities of all staff through respectful and relevant training, and placing the dignity of the people we serve above all other considerations, the most detailed and ambitious case management plan could not and will not succeed.

Single-issue solutions are not enough. To make meaningful change happen, the changes the commission makes must be bold, resolute and comprehensive.

Second, the commission must do more with less when it comes to using public resources. The best way to correct inefficiencies in the operations of the commission does not entail the creation of a more elaborate and more expensive human rights regime. It is unwise to set one's own house in order by acquiring a larger house and a more onerous mortgage.

Indeed, the commission must live in the same world and by the same rules as ordinary people throughout this country. The recession has taught us that every resource counts. This, among other reasons, is why the commission has reduced its number of senior management from seven to four and consolidated the work that was done by seven units into four new branches.

The opportunity to be economical and prudent in our use of public resources has, however, not stifled the commission's creativity. On the contrary, the commission's eight interconnected organizational improvement initiatives are renewing the agency by eliminating waste, establishing clear standards of accountability for staff in both quantity and quality of their work and in making cost-effective use of technology.

This list is not exhaustive of the measures that are under way. Neither is it exhaustive of the ways in which the commission will continue to innovate in doing more with less. One thing, however, is clear, and that is that the commission is seeking to make the best possible use of every public resource entrusted to it.

The third lesson to be learned from the canon of reports about the commission concerns the fact that the accountability for setting the affairs of the agency in order cannot be delegated, shifted or hired out. The program of change which the commission has initiated recognizes and preserves this accountability to the people of Ontario by including checks and balances at each step of the agency's investigative, enforcement and decision-making process.

The Ombudsman and the commission are in full agreement when she points out that the time for consultation, reports or consultant reports is past, and we agree that it is now the agency's turn to exercise every ounce of its professional integrity to make meaningful change happen.

Just as the commission is proceeding with caution to make the best possible use of the monetary resources which the public has entrusted to us, so too the commission is proceeding with caution to ensure that the best possible use is made of the wealth of ideas and experiences which the people of this province have shared with it.

However, in the final analysis, it is the commission which is accountable for the effective promotion and enforcement of the Human Rights Code. Therefore, the commission is proceeding with the painstaking work of making meaningful change happen in the most sustainable manner; that is, from the inside out.

In doing so, we again concur with an observation made by the Ombudsman when she addressed this committee on Wednesday last: This is hard stuff. This means having the courage to take chances. It means having the courage to try some things which have never been done before.

In the 11 months since my appointment as chief commissioner, I have witnessed the resolve of the staff of the commission to get on with the hard work needed to transform it. Accompanying me this morning are a few of the many staff who are making such change happen. I would like to read their names into the record, with your permission, Mr Chairman.

There is Mr Scott Campbell, the executive director of the commission; Mr Neil Edwards, the director of regional services and systemic investigation branch; Ms Lori Rainone, the coordinator of regional services and systemic investigation branch; Mr Carl Dombek, director of legal services branch; Mr Steve Crossman, our program analyst; and Mr Michael Markwick, my executive assistant.

#### 1030

Despite the short time since the initiation of the commission's program of reform, there are encouraging signs of improvement. For example:

- (1) The implementation of the commission's quality and production assurance system has resulted in a drastic reduction in the number of formal cases which we now have that are over three years old. The number of cases in this category has been reduced to 180. That's the lowest we've had since 1989. This is from a high of 416 in 1991.
- (2) The quality and production assurance system has reduced the number of unsatisfactory files returned by head office to the regional office for corrective work. This has fallen in fact from 25% of such cases to 5% in the last fiscal year, marking both an improvement in the quality of work produced by the regional offices and a reduction in delay in dealing with those cases.
- (3) There's been the introduction of standard time frames for each stage in the life of a complaint. These now hold officers and managers accountable for the passage of each case through the commission's processes.

- (4) The commission is also now making rigorous, careful and deliberate use of its discretion under section 34 of the code to eliminate complaints that are filed in bad faith or which are trivial or vexatious in nature. This strategy has resulted in a reduction of the commission's formal case load by approximately 5% in the last fiscal year.
- (5) In the fall of 1993, the commission enlisted the cooperation of the boards of inquiry in initiating the use of pre-hearing conferences. Through pre-hearing conferences, the parties to a complaint are able to explore options for settling their concerns prior to the merits of the case being heard. I think yesterday's release of the settlement of the Ontario Hydro case was a beautiful example of a pre-hearing conference which was successful.

This holds the promise of accelerating the resolution of many cases, minimizing the cost of litigation, making the human rights process less litigious and allowing the files which are less amenable to mediation to be heard in a more timely manner. In fact, to date 57% of the files heard in this forum have been settled.

- (6) It should also be noted that the 38 files which were the subject of the Ombudsman's investigations have been disposed of as follows: The commission has dismissed 10 of those files after investigation; 10 others have been referred to boards of inquiry; seven have been settled; six have been withdrawn; and the commission has exercised its discretion under section 34 and elected not to deal with five of those complaints. Upon receipt of the commission's decisions, in 13 of those instances complainants have exercised their rights to seek reconsideration, and currently six of these files are under review at the office of reconsideration, which is accountable for resolving them within six months.
- (7) Currently, the age of the commission's formal case load is approximately 17 months. This is lower than the average age for 1992-93, which was 20 months, and for 1991-92, which was 22 months. Although it is premature to declare a decisive victory at this point, this statistic indicates that we're moving in the right direction.

These are early signs of improvement in the commission's ability to address its case load in an efficient, fair and effective manner. However, these improvements are not the result of an isolated focus on case management. Rather, they are part of the commission's seamless agenda for organizational renewal and are supported by improvements in the training and development of staff, the development and ongoing monitoring of tight time lines, improvements in the commission's approach to systemic discrimination and improvements in understanding the role of the commission.

A key component of the commission's eight-part program of reform is dedicated to the health and accountability of the agency's staff, and here too some progress is seen.

Since 1991, the rate of turnover of staff has fallen dramatically, from 14% to approximately 5%. I believe this is due in some measure to the amount of time which has been invested in equipping the staff to meet the considerable demands of work in the field of human rights.

For example, since June of last year, 1993, 81 person-

days have been invested in the development of training programs. These programs have equipped the agency to do such things as deliver service to customers in volatile situations, hone basic investigative skills and make effective use of information technology in the staff's daily routines.

Over the last 11 months, the staff of the commission, including management and senior management and even the commissioners themselves, have received a total of 362 person-days in training and development. This marks the beginning of a series of training initiatives which will reinforce essential skills in the execution of the commission's functions.

There has also been a fundamental change in the way in which training is being done. For the first time, adult learning principles are being applied in a cohesive manner.

The commission is well on the way to becoming a learning organization, one which fosters continuous improvement and encourages staff to support and to learn from each other as they encounter and resolve the many challenges of work in this field.

The commission has also made progress in understanding both its role and how this role is to be fulfilled.

There is no conflict in the mandate of the commission to be both an impartial and effective enforcer of the Human Rights Code and a strong and uncompromising advocate for human rights principles. Indeed, I believe this is the wisdom and the genius of a human rights commission. If we are not to become a polarized society, if human rights law is not to be reduced to that of an instrument of our irreconcilable division, then there must always be a clear and reasonable advocate for the public interest.

One of the key functions of the commission in preserving the public interest is to remain alert and responsive to the systemic dimension which is present in many cases of individual discrimination. It is very likely that the unequal treatment experienced by one person is also experienced by others who remain silent. By having a body of investigators who are both sensitive to the systemic reality of discrimination and who uphold a standard of unconditional neutrality, it is possible to make the benefits of the code felt beyond the confines of the commission's workload.

However, efficiency and effectiveness are not by themselves sufficient to guarantee the success of the commission. Ultimately, the success of the commission should be gauged by its ability to develop reasonable, foresighted and fair interpretations of the public policy mandated by the Human Rights Code.

The success of the commission should be judged by its ability to foster the climate of "understanding and mutual respect for the dignity and worth of each person" articulated in the preamble of the Human Rights Code. This work cannot be done by an agency which in the words of the Ombudsman is in danger of being "bankrupted by a continuing public focus on delay."

I have welcomed the opportunity to provide detailed testimony before two standing committees of the Legislat-

ive Assembly of the ways in which the commission is honouring its own accountability for preserving the public interest in the enforcement of human rights.

The commission is honouring this accountability with resources which have not kept pace with the increasing demands on its services. Despite the commission's best efforts to streamline both its organizational structure and its procedures, and despite the commission's continued innovations in doing more with less, it is quite possible and indeed even foreseeable that there may come a time when the limitations inherent in resource constraints will make our task impossible and our goals unachievable.

1040

The Ombudsman has called for a new level of support for the commission. I welcome that call. The staff of the commission have undertaken the most comprehensive program of organizational reform in the agency's history. In order to realize the full potential of the agency's revitalization, the commission needs to have room to exercise its accountability in creative and responsible ways; in short, room to breathe.

When the members of this assembly resolved to create the Ontario Human Rights Commission 32 years ago, they affirmed that every person in this province had an inherent dignity and worth which should not be debased, fettered or obscured. Resolving to sustain and encourage the commission during the season of its renewal allows you, the members of this assembly, the opportunity to ensure that there remains a worthy advocate of Ontario's commitment to this belief.

Mr Chairman, with your permission, my staff would like to join me: Mr Neil Edwards, director of our systemic investigation and regional services branch; Mr Scott Campbell, executive director; Ms Lori Rainone, systemic investigation and regional services branch.

**The Chair:** Ms Haslam, last week we decided we were going to go to 20 minutes for each party, with whatever time left split evenly between the three parties.

Mrs Karen Haslam (Perth): We've had a discussion about what the committee must determine. We must determine whether we support the conclusion of the Ombudsman regarding the problems of delay or whether we feel that what you have done in the interim, right up until today, with some of the statistics is adequate to take care of the problem, so we have a number of questions around some of the case load and things like that.

I want to look at strategies to address your delay problem. You mentioned internal changes that you've made to look at some of the delay problems, and you said that increased resources were not necessarily the solution, talking about a larger house. You also say you have to look at a better use of resources. One of your other comments was that you should be proceeding with caution in looking at some of the solutions you put in place.

We looked at the case load situation statistics. The age of a case is based on the time it was registered as a complaint following the ESI, or early settlement initiative process. While the number of cases more than three years old, as you mentioned, decreased in the past year, it seems that the number of cases from one to two years old

increased and the number of cases from two to three years old increased.

The question we had when we first examined it with the previous people who were in to talk to us was whether all the resources went to look at the cases more than three years old. It was great that the cases more than three years old were handled, but it didn't solve the problem, because it only left a bump growing in the middle of an increase in cases one to two and two to three years old.

Have you examined those developments, and to what do you attribute the increase of those cases in the middle? Is it because your resources went to reaching a goal in the over three years old, which then begs the question, has that really addressed the problem of delay or have you only moved the resources to look at a specific case time?

Ms Rosemary Brown: I'm just going to make some general comments about the handling of the case load and then I will turn it over to staff to give you more detail.

First of all, I think 11 months is not a long enough time to assess fairly or accurately whether the new initiatives which are now in place are working. I think we need more time. What I mentioned were some indications that we seem to be moving in the right direction. We introduced these eight organizational changes and initiatives and, as I said, put them together as a seamless web to deal with the agency's problems because we thought this would be one way of dealing with the question of our case load, formal and otherwise.

The other thing is that we have a goal, and our goal is to reduce the passage of all cases that come before the commission to within a year. We want a case to come in, to be dealt with and then reach at least the stage where it's referred to a board of inquiry or resolved in some other way within the period of a year. That is our goal. Everything we have put into place is with this goal in mind. The question of the aging of the case load was clearly on our minds when we were putting these new internal initiatives into place, and the initiatives were expressly designed to address that.

Mrs Haslam: You said you set goals, and you said it was a year. Were those met, and is one year the goal you set for all cases? You say the average age is 17 months, and I work that out to 68 weeks. But when I look at the chart we were given by the Human Rights Commission on how long it takes it to go through standard time frames for case proceeding, the 68 weeks doesn't make your time frame, according to the statistics for the ordinary case work. Were your goals met for a year? Obviously, they weren't.

Ms Rosemary Brown: No, because the initiatives have not been in place for a year. This is my earliest statement. We have now introduced these initiatives, and some of the initiatives have not been in place for 11 months. We've started this process. I've only been involved for 11 months, and that has not given us time to see whether the initiatives work.

Mrs Haslam: What would you think would be a good time line? There have been a number of stages of internal changes, changes to how you work. What type of time lines are you asking for or expecting before you see whether those internal changes are effective?

Ms Rosemary Brown: Let me tell you what results we've had to date, before I tell you the time line. We already have a reduction in the two- to three-year cases between 1992 and 1993. We're already beginning to see a reduction in that fat statistic you're using of two- to three-year cases. We're already seeing a reduction—and I mentioned a number of them—in the cases more than three years old. We're already beginning to see that.

We have probably been more generous in terms of setting our goals with ourselves, saying that we're going to have to give ourselves at least two years, maybe longer, before we can actually say that these initiatives are not working. It is going to take time, since we're starting from the basics. We're actually beginning with the upgrading of the skills of our staff. We're starting from the basic. We're actually beginning with establishing time lines, we're actually beginning with improving our monitoring system, and streamlining what we are doing. We're actually starting with the foundation, so we have to give ourselves time for that to work itself through the system.

Mrs Haslam: If you're giving yourself the two-year time, the other concern is the potential for cases to be dismissed by a board of inquiry as a result of delays in the commission. Two years is a long time to wait, given the system of delays and the existence of the possibility, due to the Shreve case, of losing. How many cases are at risk, bearing in mind the Shreve decision? 1050

Ms Rosemary Brown: First of all, I don't think we

have to wait. We're seeing improvement all the time. This is what I'm saying. We are already, in less than a year, beginning to see an improvement in the speeding up of the process. We've gone from 22 months to get a case through the system down to 17 months. I don't believe that suddenly, at the end of two years, we're going to have success. I believe it's incremental, and it's the incremental stages speeding up rather than slowing down. That is the first response. The second is that the number of cases that actually

are going to a board of inquiry are also going down. All of this is a result of increased skills in terms of our staff at the investigation stage, increased skills in terms of our staff in preparing and presenting their cases to commission, and even increased skills from the senior management in terms of their recommendation to commission, and in the training that we as commissioners are giving ourselves, increased skills in the way in which we are also handling the cases. I reiterated the decrease, for example, in the number of cases that would come before senior management and have to be sent back to the regions to have work done on them. That's been reduced from 25% to 5%, I think. That speeds up the process right there.

When I say we give ourselves two years, I said we're being generous with ourselves, because we'd rather set realistic goals and meet them than do it the other way around. I don't think there are cases at risk.

The other thing we have introduced which, as I mentioned before, is having really good results is the prehearing conferences. In fact, 57% of the cases that are even referred to board are being settled at the door of the board before they actually go inside. But we've actually had a reduction of cases that go to board from 202 down to 86 now. So it's happening.

**Mrs Haslam:** Which parts of the commission's process are most prone to delay?

Ms Rosemary Brown: I suspect that the biggest difficulty we're having with delay at this point has to be divided between three or four different parts. We have some problems with the code. We have some problems in terms of the skill level of our staff. We have some problems with the complexity of the issues that are coming before us now; they're not as cut and dried or as clear as they used to be. That is why, instead of focusing on any one area, we're trying to develop a comprehensive approach towards improving the way in which we deal with the cases that come before us.

Mrs Haslam: My colleague has a question along that line, about the increase in complexity and in the number of cases that come in, so I'll reserve my right to ask a few more questions later, and maybe Mr Martin would like to continue on that line of thought.

Mr Tony Martin (Sault Ste Marie): My interest or concern is premised on the fact that when we look at the recent history, there was a reduction, at one point, in the number of outstanding cases, and then all of a sudden it became quite large again. Given the economic difficulties we're in at the moment in the province and the upheaval and turmoil that creates and the competition it creates among people around the right to have a job, get a job, the interview for a job, all those kinds of things that come with a difficult economic time; and given that our government particularly has introduced in the last three and a half years a whole raft of new initiatives that recognize people's human rights in ways they probably have never been recognized before and, naturally, flowing from that comes a request for those rights to be adhered to and upheld and all of that, what impact has that had on your ability to make real change in a time when that is happening?

Given that that is a factor, will what you're doing have a long-term impact once this sort of blip is over—and will we even get through the blip is another question—so that in the end we will have a Human Rights Commission that will be able to deal expeditiously with things that come before it?

Ms Rosemary Brown: You're absolutely correct about the increase in inquiries and referrals to the commission. To give you some figures, in 1991-92, there were 117,171 inquiries and referrals that came into our offices; in 1992-93 that went up to 145,031; and this past year, 1993-94, we're dealing with 143,525. So the number of inquiries and referrals has increased; that's absolutely clear.

But the changes we're introducing are changes growing out of the experience of the commission itself. They're coming from inside the commission. It's people working in the commission identifying it and beginning to introduce initiatives that are internal working out, rather than using external consultants to tell us what's wrong with the commission. We who do the work ourselves are finding what needs to be done to change it. All the organizational improvement initiatives take that into account, the increased pressure, and they are designed in a comprehensive way, not to isolate individual problems and focus on them but actually to look at the whole way in which a commission is functioning and doing its work and introducing initiatives that will improve everything the commission does.

This, in the long run, is going to have an impact on the quality and the level of production and the speed with which we deal with our formal cases. It's the best possible way in which to bring about change. We've really taken all these things into account in terms of these initiatives.

Mr Martin: I appreciate that and hope that is what is going to happen. I am confident it will. However, looking at the challenge, the difficulties experienced in a bigger picture, as we move more into the realm of trying to ensure that people in our very mixed community of Ontario—culture, religion etc—have their needs met and are able to participate fully so that our economy can take advantage of the tremendous wealth of resource that's out there, are there things that we as a government could do that would make your job easier?

For example, the new Employment Equity Commission has within it the ability to look at cases that will be brought forward that, if it weren't there, would be brought to the Human Rights Commission. In this way, we don't contribute to the bottleneck in the commission at the moment, but deal with cases at a place that is more focused, specific to a particular situation that is probably going to generate some activity because of its nature and what it's attempting to do. That's an example of something we might do that would take the pressure off the Human Rights Commission.

In light of people today looking at trying to rationalize and integrate and have things come through one channel, as opposed to having a number of bodies out there doing the same kind of work, perhaps you could comment on that for me and help me come to terms with what's the right way to be going here.

1100

Ms Rosemary Brown: We really look forward to working with the Employment Equity Commission once it's up and running to ensure that, working cooperatively with each other, everybody benefits as a result. We certainly look forward to doing that.

The kinds of changes the government would be able to introduce that are non-legislative, that don't need changes in the code, we are already beginning to address ourselves in terms of these organizational changes, because they don't need actual changes in the code.

Other changes would mean the government would have to be willing to open up the code and say, "Are there amendments to the code that would make your job easier?" That invitation has not been extended to us at this time. Mrs Haslam: Are you suggesting that this be something we look at in concert with what you're doing internally, that we look at a legislative solution also?

Ms Rosemary Brown: I think we have to perceive the code as a living and dynamic instrument. It's not etched in stone. It has to always live up to the changes taking place in our community, and at some point I would hope we could have a dialogue about the ways in which the code can better serve the interests of human rights in the province: not the commission, but the principles of human rights in the province.

Mr Gary Wilson (Kingston and The Islands): Have we got more time, Mr Chair?

The Chair: I think you have had your 10 minutes for the time being. You can save a question for later on.

Mr Frank Miclash (Kenora): Following up on some of the things you were saying in terms of the amendments to the code, what kinds of amendments might you suggest that would improve the case processing time?

Ms Rosemary Brown: We have actually made a list of about four recommendations that we thought would not only speed up the process but actually enhance the delivery of human rights services.

First, presently the code has a demand in it that if a complaint is filed, it has to be examined. The introduction of a "reasonable standard" clause which we could use to assess or determine whether we should proceed with a file would certainly be helpful. We realize this would also call for an appeal mechanism, that if we say we don't want to deal with it, the complainant should have some form of appealing our decision. But right now we have no choice: If you file a complaint, we have to look at it.

The other is that in section 34, where a decision is made about whether to proceed, that's a decision that has to be made by the commissioners. It is possible that the executive director or senior staff of the commission, with the skills and the training, should be in a position to make that kind of decision, again on condition that there is a right of appeal. In each instance there has to be a right of appeal to protect the right of the complainant or the respondent, or both, in terms of those decisions.

Another is that section 33 of the code compels the commissioner to always endeavour to effect a settlement in each complaint. Sometimes it is very clear to the commission that we are dealing with irreconcilable differences and that the issue should be referred to a board of inquiry for adjudication and that we should not spend any more time with this because we're dealing with two immovable forces that are not going to come together. But we have to still go through the process. That takes additional time.

Those are three of the areas we'd certainly like to have some dialogue on.

Mrs Haslam: You mentioned four. What was the fourth?

Ms Rosemary Brown: Three, sorry.

**Mr Miclash:** I thought I was doing the questioning. You indicated that your understanding of the role of

the Human Rights Commission may not be out in the public as you would like to see it. How is the understanding of your role promoted?

Ms Rosemary Brown: I think it's a mistake to assume that the Human Rights Commission should be solely responsible for the dissemination of human rights around the province. I see us as just one of the institutions or organizations that do that. Human rights should also be the responsibility of the elected members of the House. It should be something that is part of most of the social institutions of the province.

We are just one commission, and our role is to enforce the code as well as to talk about human rights in a way that will support an environment in which the rights of people in the province are protected, but by no means should it be left simply to the Human Rights Commission to do it all.

A component of our work is education. We do have a public education and public policy branch in the commission, and it is now in the process also of being part of the organizational changes taking place in the commission. That job is being done by us, but to leave it to the commission to do it all is really doing a disservice to the people of the province.

Mr Miclash: What kind of funding do you set aside for public education, that kind of thing, in terms of getting that message out from the commission?

Ms Rosemary Brown: I'm going to have to ask the executive director. When it comes to money, he's much better at this than I am.

**Mr Scott Campbell:** I don't have that data before me, so I can't tell you that. I can get that for you, but I don't have it.

Mr Miclash: I'd be interested in that. I think it's just knowing the role of the commission, and there's sometimes a misunderstanding out there. The cases that have come to me in terms of complaints on delays sometimes have stemmed from that, not really knowing the role the commission would play in any specific incident.

Mr Campbell: As a supplementary to my comment, one of the things we are doing as an organization at this time is looking at ways of delivering public education that are much more cost-efficient and cost-effective than what we did in the past. Let me give you an example.

We have had in the past our human rights officers, who are our most significant resource out in the field, delivering public education to high school students. In the last six months we've developed a public education package for teachers so that the teachers are taught about human rights issues and they in turn teach the students. There's greater leverage in terms of teaching teachers and then having the teachers in turn teach the students, as opposed to us going out and delivering it directly to the students. That's an example of the way the commission is going in terms of public education in the future.

As to your first question, I can get you that answer, but I don't have it before me today.

#### 1110

Mr Miclash: In the Cornish report we see a model for the enforcement of human rights, and the report makes some recommendations in terms of processing and delays. Do you see more effective ways of dealing with this than what is in the existing system?

Ms Rosemary Brown: All of the changes that we are making are based on our belief that they are more effective than had been done in the past. We looked at the Cornish report and studied it, as we did all the other reports that were done by consultants for the commission, and benefited from some of the recommendations which were non-legislative that were made in that report.

Mr Chairman, I think it was Ms Haslam who asked a question about the case load. Some additional information that was passed to me shows that as a result of streamlining our intake function, the actual number of cases that are being dealt with by the commission is starting to go down. In 1991-92 there were 2,535 such cases; in 1992-93 there were 2,317; in 1993-94 it was down to 2,286; at present we're down to 2,069.

Mrs Haslam: That was the chart I looked at. But there were concerns when we looked at this chart because it indicated that there were still problems of delay. Looking at the number of cases that came in and the ESIs and the percentages, and we have that chart, what we were concerned about was how they were being handled: The questions we have are around what are the causes of delay: Where is the bottleneck? What can you do about the delay? Are some of the things you're putting in place and the goals you've reached—have they been met, and if they haven't been met, how can you meet them? It's looking at the time lines of how long we wait to see that. To be very blunt, the Ombudsman came in and said—I wrote down some of her comments—there are potential problems of delay in waiting for your case management idea to come to fruition.

I believe my colleague has asked about the Cornish report, saying there was a comment: "Further mechanical adjustments: The introduction of streamlining measures or mandatory time frames will not diminish the problem. What is needed is a fundamentally different process." I believe that's what my colleague was alluding to. You've come to us with some suggestions for additional streamlining, looking at skills, looking at the case management plan. What we have to ask is, how do those present initiatives differ and how will they increase your effectiveness? That's taking into consideration your case management plan and the government's September 1991 strategy. Is that the solution?

You're saying that we need another two years to prove that this is working. What we're saying is, can we afford to wait another two years? What if little progress results in the next six months, in the next year? Then we have to take a look at the number of incoming cases increasing again. What is the downside of waiting that amount of time? How many cases are in jeopardy? That's what this committee has to deal with.

Ms Rosemary Brown: No, I'm sorry, I guess there is a real misunderstanding about my presentation. I thought I had been really clear that with these initiatives, some of which have not even been in existence for more than six or eight months, as the case may be, already we are beginning to see signs that we are completely on the right

track. We have already surpassed our goal. Our goal for closing of ESIs last year: We were above that. Our goal for closing of formal cases last year: We have not only met our goals to date, and we set our goals at the beginning of each year, but we have surpassed our goals.

I don't think it's realistic or fair, in a matter of 11 months, to expect me as chief commissioner and the commission, which is going through this stage, to have solved a problem which the commission has been living with for a number of years. The changes which we have introduced are not superficial. They are not bandage changes. They are very fundamental changes, basic changes. What we are suggesting is that because they are basic, because they have been generated from the people themselves who are doing the work at the commission rather than from an outside consultant looking at us, the chances of these changes working are better, and we have the proof that they are better.

I want to give you another statistic. We had anticipated that we would have approximately 30 formal cases closed per officer each year. In the last quarter of last year we actually had 50 formal closings per officer; 20 of those were ESIs and 30 were formal cases. Although we've only introduced these changes in a period over 11 months, we are already beginning to see much better results than we had when the commission tried to deal with changes which were recommended by consultants in the past. So we're not concerned about meeting our deadlines. We are going to meet them and surpass them.

Mrs Haslam: Our concern, though, is that the Ombudsman comes and says you met them in your overthree-years-old ones but is that meeting the overall case load delays in years one and two?

Ms Rosemary Brown: Yes, it is, because we have already got indications that the two- to three-year cases are on their way down. We've already done that. They were down from 1992 to 1993, they're down from 1993 to 1994 and we have every indication that this trend will continue. This is not a task force. Every single person working in the commission, including the commissioners themselves, is going to have to do better work. That's what we're saying.

Mrs Haslam: That's fine.

Mr Gary Wilson: Greetings, Rosemary. The last time we had a chance for discussion was at Summerhill at Queen's where you were there to get your honorary degree in recognition of your vast experience and ability in the field of social justice. I'm very pleased that you're in the position that you are now.

Ms Rosemary Brown: Thank you.

Mr Gary Wilson: I just want to follow up to clarify these figures. We have a table here that shows the case load by age group as of March 31, and for two to three years old it does appear that in 1992 it was 341 and in 1993 it was 196, but in 1994 it went to 239, which sounds like a rise. You mightn't have that table in front of you.

Ms Rosemary Brown: We are only three months into the year.

Mr Gary Wilson: Okay. I was interested in the

comparative approach, partly again based on your experience, in two ways. You said that the people where you might expect the best changes to be made would be the ones who were actually working in the field, the ones who are a part of the Ontario Human Rights Commission. I was wondering, though, why previous commissioners wouldn't say that and why it appears not to have worked.

Ms Rosemary Brown: I believe that a lot of our collective wisdom is based on the experience of past commissioners, that we've benefited from what they've tried that hasn't worked. We've seen what the consultants' reports have said. We've read and inwardly digested them. We've seen the attempts that have been made to implement some of them, and certainly, spearheaded by our executive director, Scott Campbell, the internal, fundamental changes that are taking place are beginning to have better results. It's like saying that if you really want a nice complexion, you drink a lot of water and you don't put on a lot of makeup. Sorry, you wouldn't understand that. Let me think of another.

Mrs Haslam: I understand.

Ms Rosemary Brown: Okay, thank you.

Mr Gary Wilson: I don't know what that says about my complexion, but anyway.

Looking at the comparative approach, especially based on your experience from other jurisdictions, I was wondering how plugged in you are to what other human rights commissions are doing and whether they're faced with similar problems and whether there's anything you can learn from their experience.

Ms Rosemary Brown: There's this overall umbrella organization, the Canadian Association of Statutory Human Rights Agencies, which once a year brings all the chairs of human rights commissions and senior staff together to exchange ideas. It would be fair to say that Ontario, as the senior human rights commission in Canada, is still the one which is expected to set the tone, to take the risks, to push the boundaries, to set the example. I think it's fair to say that the commission is doing that, and our goal is to see to it that the commission continues to do that.

1120

Mr Campbell: Just to add to what the chief commissioner has stated, there are other commissions that come to us almost on a weekly basis, certainly on a monthly basis, to talk to us not only about case-specific issues but also about how we as an organization administer our case load. So they're learning from us, and I think they learn more from us than we do from them, if I may say so.

Ms Rosemary Brown: We've had visitors from outside of Canada who've done that. The commission in Bermuda, I think it is, is continually being mentored by us. Just prior to the election in South Africa, we were visited by the Chief Justice, who is going to be responsible for establishing its human rights commission. They looked at our commission and had some meetings with us and with senior staff to get some ideas about the way in which a human rights commission should function. We are seen, even outside the Canadian borders, as a model commission.

Mr Campbell: If I could just go back to talk about what the chief commissioner talked about a few minutes ago, what we did a number of months ago was make a fundamental choice. We could have continued on developing case management strategies only. The case management strategies that were developed in the early 1990s obviously had some effect. There were some positive effects as a result of that. But what we chose to do was go beyond that and look at fundamental organizational change.

Just so the members of the committee are aware, this eight-part change process that the chief commissioner has talked about includes issues such as quality and production assurance. We are talking about quality standards in terms of how you process a case, in terms of production standards, in terms of the number of cases you will produce as an officer; customer service initiatives in terms of how you will deal with our clients; enforcement procedures in terms of the time lines that the chief commissioner has talked about.

There is technology. When I came to the commission, not everyone had a computer on their desk. Now we have a one-to-one relationship for computers, essentially. What we're now doing is developing the capacity of the officers to use that technology to a much greater extent than in the past.

The restructuring of the commission: We had very poor lines of responsibility and accountability in the commission. We've gone from seven directors, as the chief commissioner said in her opening remarks, down to four. That is not just to save dollars, but also to enhance accountability.

Training and development: The chief commissioner talked about a lot of that in her opening remarks. We're putting an awful lot of money into that, because the more money we put into that—money, time etc—we feel will advantage us in the long run.

Finally, the last two of the eight-part change initiatives is accountability in terms of accountability requirements. What we're doing there is building right into the system of our organization, which is less than 200 people, specific accountability requirements that every single person has to be held accountable for, whether that is accountability in terms of the number of cases you close or in terms of how you deal with customers etc. That's important in terms of this whole notion of driving it down through the organization.

One of the concerns I had when I joined the organization was that everybody was doing this from the outside. We felt it was much better to do it from the inside and get by in terms of the people in the organization itself.

The last organizational change initiative is regarding anti-racism. We have had a lot of comments about that and we, as an organization, felt it was very important to become a model employer in terms of anti-racist organizational change.

That may give the members a bit more of a picture in terms of exactly the magnitude of this change. It puts in context a bit about what we're doing relative to what other commissions are doing. It is my view that there's

no other commission in the country that has embarked on as comprehensive an organizational change agenda as has this commission. It's going to take some time for it to bear fruit fully, but our early returns are very positive.

Mr Gary Wilson: On this comparative approach, you say Ontario's the biggest, but what about, say, per capita, or how do we compare to the others? Has anybody ever done a study about that to see how much the province devotes in money and resources?

Mr Campbell: I don't have those data in terms of expenditure per capita relative to New Brunswick, relative to PEI, relative to Saskatchewan, relative to BC. For the record, our expenditure for 1994-95 is just over \$12 million and our budget, excluding task force infusion of funds, has remained basically constant over the last number of years, as the chief commissioner said in her opening remarks. However, our workload in terms of inquiries and referrals obviously has increased, as has the complexity of our work.

Mr Gary Wilson: Would you say that reflects the experience in other organizations? Also, on the difficulty or the problems with case loads, you say people come to talk to you about it, so I assume they've got problems as well.

Mr Campbell: Yes. We've had discussions with the Canadian Human Rights Commission that are very similar to discussions we're having in this room today. What do you do about delay? How are you handling older cases? How are you handling cases that are not formal cases yet, but they're inquiries or referrals etc? The situation is very similar.

Mr Gary Wilson: The chief commissioner mentioned in her remarks the decline in staff turnover, I think it was 14% to 5%, which sounds very encouraging. Of course, the experience of your staff is very important, working out these new arrangements, but also it sounds as though they're pleased with the kinds of changes that are occurring. The accountability they're expected to meet sounds as though that's something they support.

Mr Campbell: There are two points I would make on that. In any organization that's going through change, there are both pluses and minuses. People look at change and say, "Yes, it's a good thing," but they also look at change and say, "Is it going to affect me one way or the other?" and they may become a bit negative about it. Generally speaking, I think the staff of the commission look forward to this change process. They see that as a result of doing what we have done and what we're going to do, we will become a much stronger organization in the end.

#### 1130

Mr Martin: I want to explore further the question of the bigger picture. You referred a few minutes ago to the wonderful unfolding of life in South Africa these days, and how excited we all are about the fact that finally we are recognizing the rights of a huge group of people. In Ontario, even though we've moved a long distance in the recognition of people's rights and many of us see the recognition of people's rights as contributing in significant ways to the health and wellbeing of the community

of Ontario, yet we still run into some tremendous resistance and pockets of real difficulty in this effort.

I see one of the roles of your commission, besides dealing with the individual cases, indicating to us as a government, to the larger community, what it is we need to do as a group of people to come to terms with this question of rights. The role of your commission, and you talked a little bit about it earlier when somebody asked a question, was brought up by the Ombudsman last week: Are you an advocate for the government, are you simply a group that deals with issues that come forward and resolve them, or do you have a role to play in working with government to change the environment within which we operate and do you have a role in the area of public education and that kind of thing.

I refer back, and I did last week, to an instance just recently, where we had an election in Victoria-Haliburton. One of the parties appealed to the lowest common denominator in people—fear, misunderstanding and all of those kinds of things—to win a seat. In my mind, it doesn't contribute to the healthy further development of the rights of people and all that. How do we deal with that? Do you have any thoughts, any suggestion for us as a political body in front of that challenge we face?

Ms Rosemary Brown: It would be fair to say that the commission was certainly very clear in its position on this particular issue, because the commission is an advocate for human rights principles and looks at the policy issues, not as an advocate for individuals as such.

Certainly, dealing with the issue of the rights of people not to be discriminated against because of their sexual orientation, that is something the commission has been very clear on. We have a number of cases which went before the board of inquiry and the board of inquiry supported the commission's position. These cases now stand as an example for the government in terms of its legislative program, I would imagine.

The commission has no problem in terms of principles, in terms of articulating principles and in bringing down decisions about whether to refer to a board of inquiry or not issues of discrimination based on the principles that are mandated by the code.

The question of education is also mandated by the code. Part of the job we have to do is to help to create this climate in which all British Columbians—sorry; all people of Ontario—

Interjection.

Ms Rosemary Brown: Yes, it's the weather, you see, that does this to me.

Mrs Haslam: It's raining.

Ms Rosemary Brown: I look outside and it's raining and I think I'm in Victoria—in which certainly everyone is treated with dignity and respect. But it's not a job which can be done just by the Human Rights Commission alone. It's a message I think, which has to be articulated by other social institutions, certainly our schools, certainly our legislatures.

This is a particularly difficult issue when you find that some of the really important social institutions that we've relied on for centuries, like the church, to set the example for us and guide us are split on it. When the issues are now really becoming so complex that we can no longer even rely on that, it makes it difficult for the commission too, but it makes your task even more difficult. I'm not going to presume to tell you how to vote on that one, though.

Mr Martin: You don't have to.
Ms Rosemary Brown: Okay.

Mr Martin: I heard from you, and I'm certainly comforted, that the commission has a role and that you're sympathetic to the challenge we confront. Are you in any way comfortable that we are as a community, our province, making progress, or are we stuck someplace?

Ms Rosemary Brown: Certainly, it is a role of the commission to see to it that these issues are not side-stepped or swept under the carpet. When someone files a complaint, the commission has to be courageous in terms of dealing with that. The commission has that commitment and will honour it.

Mr Martin: Thank you. That's all.

The Chair: Thank you very much, Ms Brown. I think we have finished with the questions. We appreciate your presentation and the very open way you've answered the questions of everyone. It has been very acceptable to all of us. We are going to meet again with the Ombudsman next week, when she is going to have a chance to reply to your presentation, and then we'll go from there.

Ms Rosemary Brown: Could I in closing deal very briefly with a one-page list of achievements that I thought would just make it easier because they're itemized on our list of achievements since the beginning of these initiatives?

As a result of the introduction of the quality assurance standards, again the cases which are returned, the files for corrective measures have been reduced from 25% to 5%. This has speeded up the process in terms of dealing with these cases.

Again, because of the production assurance standards, our cases over three years of age have been reduced to 180, and the case load cases between two and three years of age have also been declining.

Some 50% of all of the cases which we deal with are closed within 90 days. That was one statistic you didn't have. We've certainly not only met but surpassed our goal for closings in terms of ESI, with 777 case closings in 1991-92 being increased to 1,177 in 1993-94.

As a result of using section 34 more rigorously, the number of cases that we've applied section 34 to—that is, not to deal with them—has gone from 2% of the cases that come before us to 5%. The introduction of the prehearing conferences has resulted in a 57% settlement rate for those. The turnover in our staff complement reduced from 14% to 5%, and the age of our formal case load again reduced from 22 months to 20 months and then down to 17 months.

In particular, we want to bring to your attention the average case closings goal that we had per officer, which was 30. In the last quarter of last year, we actually had 50 per officer. So we've had almost a 40% increase there. The 38 cases which were brought to your attention

specifically by the Ombudsman have been dealt with. There are no outstanding cases still to be dealt with of those 38 cases.

**The Chair:** Thank you. There is another question from Ms Haslam.

Mrs Haslam: We're back to case loads and we're back to charts again, and that's what my concern is. If you take a look at cases pending investigation, and that's exactly what our concern is and what the Ombudsman's concern is, cases pending investigation since 1993 up until 1994 have increased on a regular basis. It's month by month. There was a decrease—

**Ms Rosemary Brown:** Sorry, would you tell me what page you're at?

Mrs Haslam: This is—have they got a copy of this?

Ms Rosemary Brown: Yes, we have. What page is it?

Mrs Haslam: That cases pending is table 1, cases pending investigation. That's the one concern, that cases pending investigation have actually increased, and it shows that they've increased month by month, except a little blip in February.

The other concern I have is when Mr Wilson was asking you about case load by age group, and you mentioned, "We're only three months into 1994 and we've done so much." But if you go back to case load by age group as of March 31 in your submission, I have two questions. If you go to the cases pending, I'd like to know, how old are some of these cases? What caused the increase in cases pending investigation? Those are the two questions about that.

If you go back to the chart, case load by age group, as of March 31, you said, "We're doing better. Each office is getting more done," and so on and so forth, but take a look at the end of March. Under six months is down, but every other one right down to three years is up. And that's your own statistics. I wondered if there was any explanation for that.

1140

Ms Rosemary Brown: I think I'm reading the chart wrong, so I'm going to let my staff deal with that.

Mrs Haslam: If your staff would look at the case load by age group—I think I'm clear on my questions around the pending—if you look at the age group, in 1994 under six months was down, but seven to nine months the number of cases is up; 10 to 12 months, the number of cases is up; one to two years, it's up by almost 300; in two to three years, it's up.

Ms Rosemary Brown: Okay, we got it.

Mrs Haslam: The only case load age group that went down was over three years, and that's what I was trying to ask you. That went down, but the rest seemed to go up. You said now you're working it all out, right?

Ms Rosemary Brown: That's right.

Mrs Haslam: It doesn't say that in this chart.

Ms Rosemary Brown: I'm going to let Scott answer it but, in a nutshell, the task force cases are all gone. Now we're dealing with this buzz that's going through the belly of the snake, so I'll let him explain that to you.

Mr Campbell: First of all, the data speaks for itself. You're quite correct, Ms Haslam, in interpreting the data. What we did and what we are doing as a staff is concentrating on the cases of three years of age and older. Therefore, you can only put your effort in so many places at one time.

Mrs Haslam: Can I interrupt you, because that is the concern of the Ombudsman.

Mr Campbell: But could I continue?

Mrs Haslam: Okay, go ahead.

Mr Campbell: However, as you can see, that number now at 180 is the lowest it's been for a significant period of time. That's point one. Secondly, as cases age, they become more difficult to deal with. People's memories are not as clear etc. We've done a lot of the difficult stuff now, because of course we now have 180 in that category, we don't have 416, so that's an important point.

Let's put that aside. We've now also, though, introduced a whole series of other changes within the organization which are now beginning to bear fruit, and going back to what the Chief Commissioner said a number of moments ago, we now see in the last quarter of this past fiscal year 50 closings per officer. That's the rate and that's a significant improvement over any previous quarter, certainly since I've been with the commission.

That means that the non-legislative changes that we have put in place, whether they be enforcement procedure changes, whether they be quality assurance changes, have begun to take effect. So we are very confident that this blip, as you refer to it, will be dealt with by these changes. It's not going to happen overnight, but it will happen.

If at some point in time we get to a point where we simply cannot deal with this with the existing resources—and for the record, the existing resources of the commission, as I said earlier, are about \$12 million in terms of the expenditure of the commission and about 180 to 185 staff depending upon fluctuations from month to month.

If at some point in time we come to the point of saying, "Look, we've done as much as we possibly can with the existing resources," and given this organizational change agenda, then we may very well have to come back through our minister to this Legislature to ask for additional resources, but it is our view that right now we want to continue to focus on this change agenda, see how much we can get out of that change agenda. The early indications are very, very good. But we've got to continue on with it.

Mrs Haslam: I have three quick questions, because this is what this committee has to address, the Ombudsman coming and saying—so my question is, you say that each officer has settled 50 cases. If those 50 cases are only in the over three years because you've concentrated in that area, it really doesn't answer the question of whether, once that three-year task force is done, the same situation will affect the cases that are between one and three years and the question of pending cases growing.

Ms Rosemary Brown: It does, because if they're closing 50 cases each and there are only 180 left, we're talking about four officers. We have 58 officers. Where

are they going to find the 50 cases to continue closing for the rest of their worklife? It's going to come from those two- to three-years cases.

Mrs Haslam: So you're working your way back.

Ms Rosemary Brown: That's right, which is the reason why we're beginning to see a decline in those two- to three-years cases. It's just beginning to kick in. You can't judge what's going to happen because it's just beginning to kick in. We need more time.

**Mrs Haslam:** Why are the cases pending increased?

Ms Rosemary Brown: Increased from when? The 180-case figure we gave you is just from March 31, so those officers are now going to be able to deal with other cases because they no longer have 412, 415, 416 cases to deal with; it's 180. When they're through those 180, what do they do? They start moving into the three years old and into the two years old. What we need to look at is our openings, not those.

Mrs Haslam: So you see cases pending on a downward trend?

**Ms Rosemary Brown:** They have to be. That is our goal. They have to be. Give us time. It's going to happen, or else.

Mr Campbell: The answer is yes, we see it as going on a downward trend.

The Chair: Thank you very much.

Members, we are going to meet next Wednesday to hear the Ombudsman's response to Ms Brown's presentation, but also we have to start dealing with the family support plan. I would suggest starting at 9 am rather than 10 so we'll be able to finish on Wednesday, for the briefing of counsel of course. At 9 am we start for the briefing of counsel and at 10 the Ombudsman is going to be here and then we proceed with the actual case.

**Mr Martin:** At 9 am we're doing what?

**The Chair:** Briefing from the counsel on the family support plan, at 10 the Ombudsman is going to be here and then we continue with the case. Do you all agree?

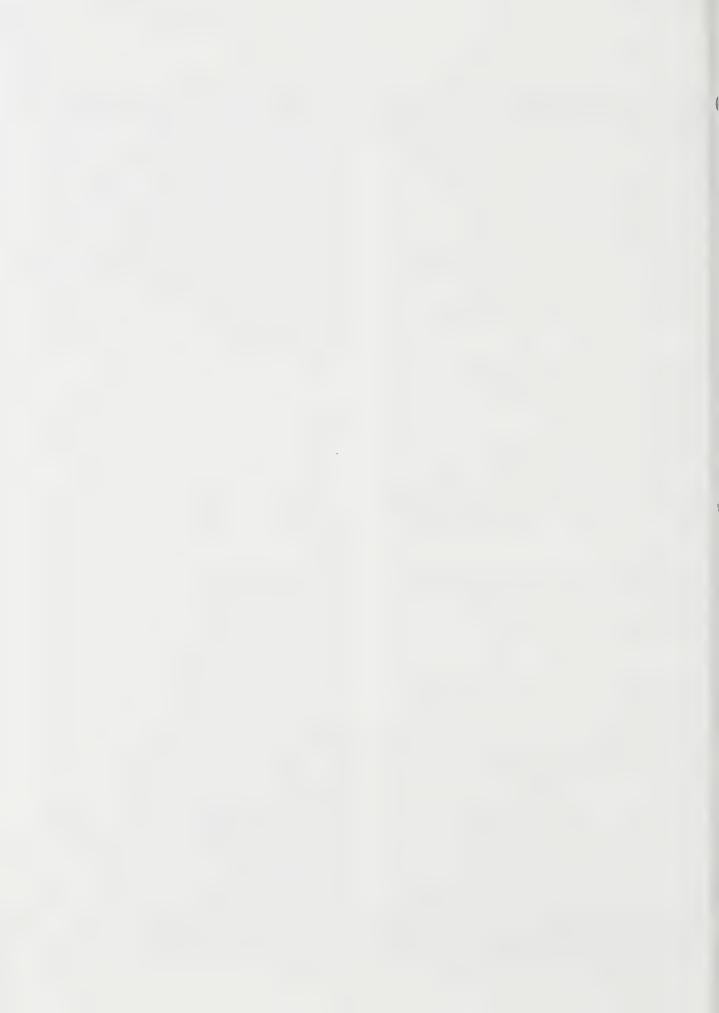
**Mr Gary Wilson:** Is Paul the counsel for that? Are you doing the family support plan?

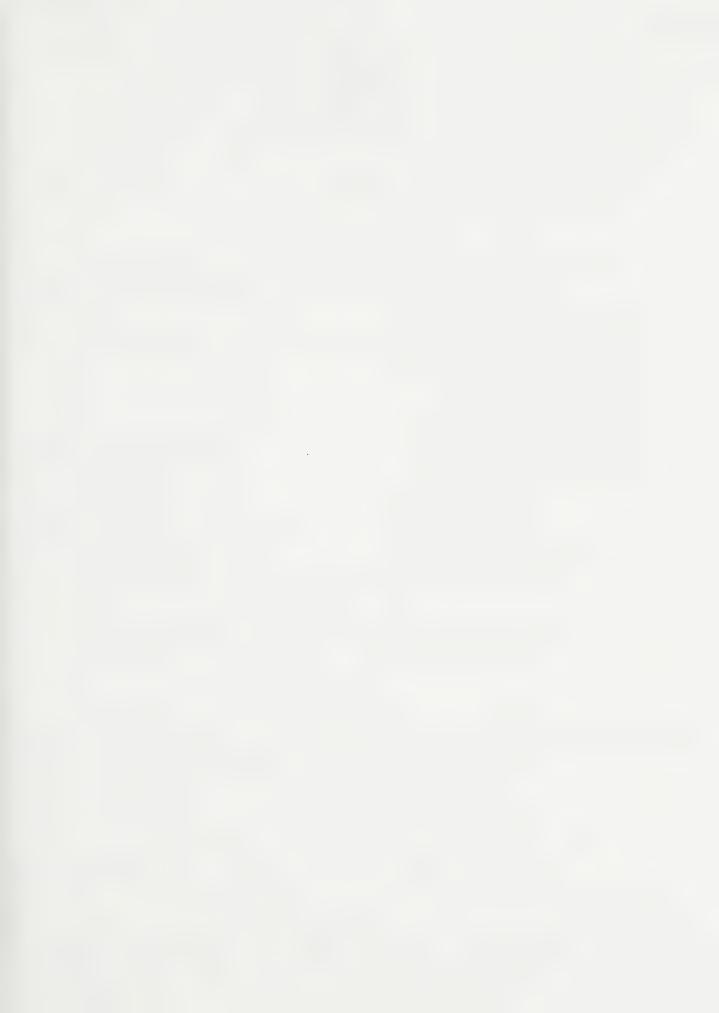
Mr Paul Murray: Yes. What we're going to be doing is we'll meet at 9 o'clock. I'll brief the committee on one of the other two cases that were in the Ombudsman's special report from July 1993, which concerns the family support plan. I'll brief the committee from 9 till 10; from 10 till 10:30 the Ombudsman will be back to respond on the issue of delay at the Ontario Human Rights Commission; from 10:30 to 12 we'll deal with the family support plan case. That's the schedule. You should have materials on the family support plan case. If you don't, contact either the clerk or myself to obtain them.

Mrs Haslam: When was the material on the family support plan sent out?

Clerk of the Committee (Mr Todd Decker): Recently.

**The Chair:** Very good. The meeting is adjourned. The committee adjourned at 1148.





# **CONTENTS**

# Wednesday 11 May 1994

Ombudsman special report on the Ontario Human Rights Commission	B-41
Ontario Human Rights Commission	B-41
Rosemary Brown, chief commissioner	
Scott Campbell, executive director	

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Clerk / Greffier: Decker, Todd

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<sup>\*</sup>In attendance / présents





B-8

B-8

ISSN 1180-4300

# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 18 May 1994

Standing committee on the Ombudsman



Ombudsman special report on the Ontario Human Rights Commission

Case of Ms M

Chair: Tony Rizzo Clerk: Todd Decker

# Assemblée législative de l'Ontario

Troisième session, 35e législature

# Journal des débats (Hansard)

Mercredi 18 mai 1994

Comité permanent de l'ombudsman

Rapport spécial de l'Ombudsman sur la Commission ontarienne des droits de la personne

L'affaire M<sup>me</sup> M

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 18 May 1994

# ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 18 mai 1994

The committee met at 1004 in room 151.

OMBUDSMAN SPECIAL REPORT ON
THE ONTARIO HUMAN RIGHTS COMMISSION

**The Chair (Mr Tony Rizzo):** We're ready to start the meeting. Ms Jamieson, I think you can go ahead and make your statement.

#### OMBUDSMAN OF ONTARIO

**Ms Roberta Jamieson:** Good morning. Bonjour. Sago. It's a pleasure once again to be meeting with the committee.

As I understand the allotment of time, the Chair has asked that I spend a few moments at the outset responding to the presentation last day by the Ontario Human Rights Commission, and then we would move on to the consideration of a case I presented to you in the special report last year, the case of Ms M. I'll start, then, with the Ontario Human Rights Commission.

You'll know that it's two weeks ago today that I presented this issue to the committee. I reviewed with great interest the evidence provided to you last week by the chief commissioner and staff of the Human Rights Commission. I appreciate what was said and I appreciate the steps that have been taken, where the commission is planning to address the problems of backlog and delay. Indeed, I am supportive of them, particularly the training and development initiatives for staff at all levels and steps to reinforce the accountability of staff and managers alike for achieving the case load goals.

I will say that there was nothing said last week in the presentation that has caused me to change the views that I put forward to this committee two weeks ago. I shared with you then some of my ongoing concerns, having reviewed the case load at the commission: the middle bulge, the fact that early settlement initiative cases are not counted in the ongoing case load and so on. I won't repeat those today, save only to say that in the evidence I heard last week, the data were not new and they have not caused me to alter my views.

I also would like to say that while the commission is making efforts and rightfully says that time is needed to show results, and they should be given time, I also am convinced that this, and this alone, will not address the problems that are outstanding. My view, having investigated this matter as an officer of this Legislature, is that if we are to provide a framework for the promotion, respect and enforcement of human rights in this province for all of its people, our children and our grandchildren to come, broad reform is required.

Yes, I found problems at the commission over the last

four years; and yes, I have seen a number of case management strategies and I have seen a number of promised training and development initiatives and I have seen a number of good ideas put forward; and yes, I did find, in sum, when I put forward my report, that the efforts of the commission at that time were tantamount to a failure to enforce the code effectively in its present form; and yes, there have been efforts to improve, and these efforts are to be commended and supported; and yes, there is commitment to do more, as evidenced in the chief commissioner's evidence last week; and yes, I support that, though I have let it be known to you that I have some lingering concerns.

But will it be enough? No. Is the commission itself looking for something more? I think the answer to that is yes, and I think they made that clear last week, as I have.

What I think is needed is a combination of support for the current initiatives and time for them to work, and support as well for changes to the code which the commission itself outlined last day. It outlined three major changes, and I do support those. Something more, however, is required.

I believe it is time to respond to the many reports and recommendations that are before the Legislature itself as a whole, and that was really what prompted me to raise this issue with you. It's one that legislators are uniquely equipped to review because it calls for the longer view, the broader view. This is not about program tinkering or reorganization or reshuffling or new internal plans alone. While they are to be commended, much more than that is required. I believe the Legislature is the place for that review. I respect that, and that's why I've raised the issue with you.

#### 1010

In the final analysis, there are those who may say it's a question of whether we should wait and see if what the commission's doing now internally will succeed. Is it a question of that? Should we wait and see if they succeed or should we go for a broader reform of the code, of the whole enforcement framework, now?

I don't think it's a question of either/or. I think it's a question that both are required. I think they complement one another.

The commission is to be supported for its internal efforts. I hope they will be successful. I will be watching, as will you, from a distance, I am certain. I am hopeful that the steps they're taking will bear fruit, but I think together with that, some steps are required for broader reform.

What is required in addition is a commitment to the commission, and to the people of Ontario, that the necessary steps will be taken to ensure an effective framework to enforce human rights in this province, which is, after all, I suggest, the envy of the world in this field.

I ask you today to support the recommendation that government take steps to address the reports before it and to provide support, including legislative support, to ensure effective human rights enforcement in the province of Ontario.

Unless there are further questions, that concludes my remarks on the Human Rights Commission, the file on delay and backlog. I'll look to the Chair if there are further comments or questions to be asked.

The Chair: The members of the committee want to ask questions, and there is some time. We have to stop now and start again at 10:30, when the people from the family support plan are going to be present. I would suggest that your presentation regarding that particular problem has to be postponed until they are here. I think they would want to be here to listen to you.

We have about 15 minutes for questions, if members of the committee have any questions to ask.

Mr Tony Martin (Sault Ste Marie): I appreciate the time and the effort and the energy that have gone into looking at this by yourself and obviously those who work with you. It's important that we come to grips with how we deal with those instances when people's concerns aren't dealt with in a timely fashion.

However, I listened to the presentation by the commission last week, and some of my greatest anxieties were somewhat allayed in that there was a recognition that there was a difficulty, that there was a problem. I sensed a real commitment to come to terms with it and to do some things and that they were, as you have said, working very hard at this, working overtime and coming at it from a rather interesting perspective, making sure that those who are within the system are cognizant of the problems and beginning to work on them themselves.

My questioning to them at the time revolved around the issue of the unique circumstance that we find ourselves in: a time of tremendous economic upheaval and a time when we're bringing on board all kinds of new things, recognizing the rights of individuals and all that this brings to us by way of a need to make resolution of some sort.

Given that this is the circumstance and given that they are working as diligently as they can to come to terms with the backlog—they gave us some figures that showed they were making some headway, particularly in the longer-term cases—you don't share with me at least that greater sense of comfort, that when all of that allays and we do finally come out of this very difficult time and begin to move on, this thing could fall into place and we could in fact, without more expenditure of both money and human resource, be able to get a grip on this and do it in a timely and proper fashion?

**Ms Jamieson:** As we look ahead to the next century, we are seeing an increasing awareness among the people of their rights. We are seeing increasingly that people are

insisting that those rights be respected. That demand is certainly growing, and it's for precisely that reason that I think we're obliged to take some steps to make sure we have enforceable human rights in the province within a workable framework.

I agree that some progress has been made at the commission internally and I have commended it for that progress, particularly on the older cases. I have at the same time said I remain concerned about a number of things: the middle bulge, for example. It remains to be seen whether those changes will continue to decrease the backlog and delay problems over time.

For example, they're closing 50 cases each month, I believe; certainly 50 cases each investigator. One would have to look at how those cases are being closed: Are they going off to reconsideration? Are they going off to the board of inquiry? Because those are counted as closed cases. Those aren't off the commission's table, but they're off the case load. So you'd have to examine that over time to see whether the changes, the improvements, will be substantive and lasting. I truly hope they will be.

My point is, even in the face of success in that regard, the commission itself is looking for greater support and assistance. I believe they welcomed the opportunity last week to comment on changes to the code that would assist them in their work. I don't believe that's talking about a massive infusion of resources. I don't believe that will necessarily add up to additional disposition of resources. I do believe a number of those changes are very important. So the commission itself is looking for further support, and support that only legislators can provide. It's a question of taking a broad supportive approach, both of the commission's efforts internally and of creating the environment externally to make it more successful and to make all of us feel more comfortable that our human rights are protected and enforced.

Mr Martin: I appreciate that. They came before us, as I said before, recognizing the great difficulty and challenge they are facing, having looked at all of the reports and referencing all the reports that you have referenced in your critique of the operation, and assured us that they were doing a job that would get them to a place where we would all be relatively comfortable that this thing is moving.

They asked for time. They very clearly said, "Give us time. We've only in the last year or so finally come to grips with this. We've put in place some things, the internal training, and we all know who has offices that deal with that kind of thing and how long that takes, and you have to bring people on board and everything." They were asking very clearly for time, to get that put in place and see the fruition of that eventually roll out.

I guess the question I'm rolling around in my mind is: Do we trust those folks, that what they say to us is the truth and that in time they will have this thing under control and it will evolve and be better for all of us? Do we give them that time? Do we trust what they feel is progress and recognize that?

**Ms Jamieson:** I don't know if I can add any more in reply than I already have. I don't think it's a question of lack of trust of the commission and its honest commit-

ments at the highest level to remedy the situation. I'm a little sceptical, sure, but that's based on four years of monitoring and watching the situation from afar, but I certainly trust that there is commitment, there is goodwill, there will be and is an honest effort being made by the commission to better its record to deal with the case load, to deal with the delay and to deal with the backlog. I am hopeful that will remedy some of the difficulty.

But beyond that, I think they themselves would appreciate a supportive environment that could be created by changes to the code. They themselves have put forward a number of areas where they would like to see changes made that will enhance their ability to succeed. That of course is your decision, to wait for six months or a year or two years and see again how things are. I would suggest to you that even if the record of dealing with the current cases is improved, even dramatically, we are still dealing with a framework for the enforcement of human rights in this province that countless members of the public and special reports have said needs to be broadly reformed.

The commission has added its voice to that call, at your invitation. What changes would you like to see? They themselves are looking for changes. Does one wait six months, a year and a half, two years, and then see what changes are necessary? I'm not sure what more would be known then, other than perhaps a better track record in the existing case load.

The evidence is there that reform is needed and about the kind of reform that is needed. There are 88 recommendations, or 80-some recommendations, from what's known as the Cornish task force waiting to be addressed. I honestly believe, and I can only share with you my conclusions, having watched and monitored and investigated, that broader reform is necessary. I trust you'll be willing to recommend that the government address its mind to this and take that step.

Mr Frank Miclash (Kenora): Roberta, again, thank you for your presentation. I've learned more about the commission and the Ombudsman in the last two weeks than I've ever known in my entire life. In terms of the time frame, you're talking six months, a year and a half, two years. What will your involvement be procedurally over that six months, year and a half, two years, from this point on?

Ms Jamieson: On the question of delay and backlog, frankly, I think I've done my job. I have exhausted what is available to me to do. In fact, when I put the report forward last year, I reached the conclusion that accepting more and more complaints on delay and backlog, only to find them all—of the 38 I looked at, every one was supported. It was not a wise use of my resources to keep investigating and reaffirming the same thing when I knew and the commission knew there was a widespread problem.

On the question of delay and backlog, I'm not sure what more I can do. I think I've done everything I could do, and that's why I took the extraordinary measure of tabling this special report in the Legislature, because I have exhausted my mandate on this question. That's why I bring it here to be addressed.

The Chair: No more questions?

Are the people from the family support plan present? We'll take a brief recess and start again at 10:30.

The committee recessed from 1024 to 1034.

#### CASE OF MS M

The Chair: We'll start the meeting again. We'll go ahead by allowing the Ombudsman to make her presentation regarding the family support plan recommendation, after which we'll allow the members of the committee to ask questions. At the end of the questions to the Ombudsman, the Ombudsman may stay or may go, and the people from the family support plan will be making their presentation. The committee members will be allowed to ask questions. Hopefully, we are going to be able to take a decision regarding the report at the end of today's meeting, if at all possible.

Ms Jamieson: I will again try to limit the presentation so there's ample opportunity for questions and exchange with members on the areas that are not clear to them or that they'd like to discuss further.

First of all, let me review that the family support plan was then called the support and custody enforcement program when this issue occurred, but I'll refer to it as the family support plan for today.

The goal of that program is to make reasonable attempts to take timely and practical enforcement action in every case so that they can, in the words of their own mandate, enforce support orders "in the manner, if any, that appears practical."

In the case I put to the committee last year, this case involved a single parent, Ms M, who was registered with the family support plan regional office in August 1988. At the time she had two children, one aged 13, one aged four.

On March 13, 1989, a request for garnishment of federal funds was sought by the family support plan. That garnishment became effective on April 27, 1989, and was effective for one year.

In January 1990, Ms M informed the regional office that she was advised by her ex-husband that he was due a substantial income tax refund, that it was coming, and Ms M received assurance from the family support plan not to worry, that a federal garnishment was in place.

On May 7, in fact the income tax refund was received by Ms M's ex-husband.

The family support plan's duty is to take practical steps to try to attach whatever funds might be available, to be forwarded to the recipient who's registered with the plan. They do this by wage garnishment; they do this by federal garnishment. In this case, our concern focuses on the federal garnishment and the steps they took.

They decided that it was practical to go after a federal garnishment in this case, and so they did that. They in fact obtained a signed garnishment from the court on March 1, 1990. However, they did not send it to the Department of Justice until March 27, 1990.

They knew from experience that once received by the federal Department of Justice, the garnishment was not effective for 35 days after it got to Justice itself. So, in

this case, by the time it became effective, not only was it 12 days after the previous federal garnishment had expired—because there was one in place—it was also one day after the income tax refund that Ms M was trying desperately to get had gone to her ex-husband.

As we know, the family support plan has a mandate to enforce support orders. Why? So the recipients will get the money that is due to them. The federal garnishments provide a potential source of income. In Ms M's case, had the federal garnishment renewal been in place, she would have received the income tax refund that instead went to her ex-husband, and that refund represented about a third of the outstanding arrears that were owing to this individual.

#### 1040

In January 1988, what was owing to her was \$9,100. By 1990, it was \$6,600. Had the family support plan done its job and taken timely and reasonable steps, she would have had access to one third of the outstanding arrears that were due her. Had they attended to this matter in a forthright manner instead of having the garnishment sit from March 1 to March 27 in their regional office, there would have been no time gap between the expiry of the original garnishment and the subsequent garnishment, and she would have received the tax refund to satisfy a big portion of the arrears.

In fact, the family support plan did not act in a timely and responsible manner, and where one day ultimately would have made the difference, it sat with the family support plan for 27 days.

Did they have a system in place to deal with federal garnishments? Yes, they did. They knew this was a potential source of income. They had a system in place that asked them to pull these files 70 days manually before the garnishment that was in place at the time expired, then to process it, then to forward it on to the Department of Justice. It wasn't the greatest system in the world; it was a manual system; there was no formal backup to this system if someone was away or off duty; things did fall through the cracks. Indeed, this was a system that required review and improvement and I certainly agree with the Attorney General, who also feels that review and improvement was necessary, and in fact steps have been taken to improve this system.

As poor as the system was at that time, however, and as heavy as the workload was, I still believe the family support plan fell well below what was an acceptable standard of service. They had a significant period of time to move on this renewal of the federal garnishment and they did not do so in a timely way.

More than that, they had knowledge that there was money coming from this income tax refund. How did they know that? The recipient, Ms M, had gone physically to the regional office and told them, "Look, this is coming." In fact, Ms M the previous year had missed out on an income tax refund, and so this year coming she was determined that she was going to be vigilant and make sure that they were going to be vigilant in their efforts to get it to her. This, after all, is what the family support plan is there to do, isn't it?

Because she lost out on this opportunity—and I'll speak more about other things that happened to Ms M—she lost faith in the family support plan's ability to obtain the funds for her, and in the end she entered into a settlement agreement with her ex-husband which ended up with her receiving substantially less than she was entitled to in arrears.

In this case there's no question, as I've said, that the policy and procedures at the time were in need of review and improvement. There is no question that steps have been taken to improve them, and I believe they're appropriate and adequate steps. It's not those that I'm here to discuss today. That is not the issue today.

For me, the issue today has more to do with the responsibility of the family support plan in this case, where it clearly failed to take appropriate and adequate steps to secure this federal garnishment in place, and as a result, Ms M lost out. There is no question that the family support plan was unsuccessful in attaching these federal funds. So none of those things are issues before the committee.

What is at issue for me is squarely the family support plan's willingness to accept responsibility for its failure to fulfil its very raison d'être, its enforcement responsibilities, by taking adequate, timely enforcement action in the case of Ms M. As a result, they denied her a reasonable opportunity to satisfy the arrears owing to her.

What is at issue is the family support plan's willingness to compensate Ms M for the money that she lost when she settled with her ex-husband for basically 50 cents on the dollar of what was owing to her, having lost all faith in the family support plan's ability to gain access to the arrears owing to her.

I've talked about what was in place at the time. I've talked about, very simply, what happened and why Ms M was deprived of these funds. If this is the case, why then is the family support plan, is the Ministry of the Attorney General, unwilling to compensate Ms M? What seems to be the problem here?

I'd like to briefly go through for the committee's information what the views are that have been put forward to me by the family support plan as to why they don't feel they should compensate. One of the first arguments they've put forward is that this individual, Ms M, had no reason to lose faith in their ability to obtain arrears. They will argue that they've obtained money from wage garnishments all along, not the federal garnishment but from wage garnishments, and if she had only waited and put her trust in them, they would have been successful ultimately in getting that money for her too in the arrears.

The facts are that Ms M had substantial arrears: From 1989, they were \$9,100; from 1990, they were \$6,600; at June 1991, when she entered into the settlement agreement itself, they stood at \$9,977. So the arrears were substantial from the beginning, and on the rise. Furthermore, at the time she signed the settlement agreement, she was receiving nothing by way of arrears from the payor, nothing, and in fact had suffered several interruptions over the past year or so in even getting anything from wage garnishment.

#### 1050

There follows a story or two about what she experienced on the wage garnishment front. I'll tell you one.

The payor, the ex-husband, for a period of time was on sick leave from work. The wage garnishment was then transferred from the employer to an insurance company. The insurance company forwarded the wage garnishment, which was ultimately forwarded to the recipient. A further court order was registered, but it didn't get through for about a month, at which point in time the insurance company decided that it had sent too much money to Ms M and required the money to come back and be sent over to the payor.

What happened in this case is, there was again a month gap, where knowledge of the court order came to the attention of the family support plan. There was also a miscommunication between the insurance company and the employer, and this resulted in Ms M having to give back some funds. They went over to the payor. Now, this is a very frustrating situation for a payee. You would think if there had been a bit of an overpayment, even in this case through miscommunication, that it might be applied to the substantial arrears. Well, it was not.

So we're dealing here with a situation of someone who was rightly quite frustrated not receiving consistently money from the wage garnishments, and at the time of the settlement agreement not receiving any money to apply against the arrears.

She continued to rely on the family support plan throughout. I said before that she missed the income tax refund in 1989. She then had interruptions in the wage garnishment through the next year. She made what some have described to me as a herculean effort to ensure that the regional office was aware that this year income tax money was available and coming, and to please make sure that it came through to her as the recipient. She physically attended the office to do so and, more than that, received assurance from the family support plan that she had "nothing to worry about," that there was a garnishment in place.

I believe that in the end the family support plan failed. They failed Ms M and I believe they failed all of us when they did not follow through. Even when you look at the system, as poor as it was at the time—and it has dramatically improved—taking that into account, workload and so on, I still do not think there is an excuse for the failure that occurred here.

Having looked at it and investigated it from an independent and objective point of view, I believe that Ms M had every reason to lose faith in the family support plan. I believe that it was reasonable for her to conclude that despite her efforts and in the face of the assurance given by the family support plan and the fact that one day before the garnishment was effective her ex-husband again received the income tax refund and she had nothing—no arrears and two children to support. What was her alternative when we come to 1991, when she signed the settlement agreement?

I suppose her alternative was that she could once again have faith and hope and a prayer in the ability of the family support plan to gain access to the arrears for her. I think not. I don't think that was a reasonable alternative at the time. She decided instead, and I believe it was a reasonable choice, to accept what she could get because it was real, and having received nothing in arrears, nothing in the promise and no reason to expect anything otherwise, she accepted what was offered to her by the payor, her ex-husband.

The ministry has also argued that it is not its responsibility. They're not the guarantor for the payor; it's the payor, the ex-husband's, responsibility to pay the support. The court order even spoke to an income tax refund being available and the court order even said to the payor: "You've got to provide that. You've got to forward that to the recipient." The ministry will say that it is not its responsibility to pay; it is the payor's responsibility.

What concerns me about that argument is that the reasoning behind it seems to ignore the fact that the whole reason the family support plan was created, the reason it was born, is because payors were not fulfilling their support obligations and as a result were leaving many, especially single parents and children, in very precarious circumstances.

Having created the family support plan to enforce support orders, I think Ms M and indeed every member of the public is entitled to expect that it will do the job it was set up to do in a reasonable and timely fashion. We are indeed devoting substantial resources to this office and sustaining that service, and if they're not providing that service, I'm not sure why they would hold themselves out as doing so. I believe when they do not provide that service, they are obliged to accept responsibility for their failure.

The ministry will also say, and has said to me, that Ms M entered into the settlement agreement of her own free will, and more than that, she had the benefit of legal counsel, so she knew what she was doing. I don't think there's anyone who questions whether she knew what she was doing. The fact is, with the alternatives that were available to her because of the failure of the family support plan, she did accept that settlement; she did lose faith. It should also be recognized that at the time, it was widely acknowledged, certainly in family practice in legal circles, that you could not put your faith in the family support plan to gain those funds for you. So I think the fact that she had access to legal counsel does not absolve the ministry of its responsibility in this case.

There is also an unstated concern about floodgates. I hear more than I care to admit about floodgates in all the cases I deal with as the Ombudsman for the province. When I want government to accept responsibility for something, I often find myself dealing with the issue of, "If we do it here, will we have to do it everywhere, and is that a reason not to do it here?" So I'm not sure, but certainly it should be considered in the back of your mind, this floodgates argument about which I hear.

I think the real issue here is, if government accepts responsibility and compensates Ms M in this case, will it be setting a precedent? I think that we're entitled to expect government to accept responsibility for its failures

on a day-to-day basis. I have also heard that the ministry feels we are holding the government up to a level of accountability it is unable to accept.

What is it that they are willing to accept? On the one hand, it is argued it's not their responsibility, that it's the payor who is obliged to pay; on the other hand, it's argued it's not their responsibility, it's Ms M with her legal counsel who settled this. I think there is some responsibility here to be borne by the family support plan. I think there's no question in this case that they have failed her, and as a result failed all of us, in their duties. 1100

If that's the case, what's the penalty for that? Is it an apology? Is it: "Trust us. We'll do better next time"? Is it: "Give us another chance. We've improved"? The reality in this case is that Ms M has lost a substantial amount of money, arrears that she will not be able to obtain at this stage because of the position she was put in. I believe, in the final analysis, that government is in the business not only of creating standards in our society, of setting them, but also ought to be in the business of maintaining them. When they fail, they ought to be willing to take reasonable steps to repair the situation.

This case really comes down to a very simple question of responsibility: Is government obliged to accept responsibility for its failures? I believe the answer to that question is yes, and where someone has irrevocably suffered loss as a result, part of taking responsibility for the failure includes making whole those people who have lost as a result.

This really comes down to an issue of fairness, justice. This is not a court of law. The standards that the Ombudsman is able to look at are broad in scope and really do take into account broader concepts of fairness and justice. That's one of the reasons the Legislature created it: justice in its fullest sense. I believe the Ministry of the Attorney General knows something about that concept. Surely it's fundamental to our system of government that there be accountability and responsibility.

When you have someone with the courage of Ms M, who has suffered loss, willing to come forward, willing to take the step of registering her concern, first we must commend her for her courage; second, we must commend her for caring enough about the rest of us to raise these issues with us so that we have an opportunity to improve the system.

As an officer of the Legislature, I've investigated this case. I've satisfied myself that the concerns of Ms M were well founded. I've satisfied myself that the family support plan failed in its duty to take timely and reasonable steps to ensure the federal garnishment was in place.

The recommendation I have come up with in this case, to put Ms M in a reasonable position, is found in the report and asks you to support my recommendation that she be provided with compensation.

As I've said, this is not a question of improving policy and procedure; I believe those things have been done. What remains is, is there a willingness to compensate this individual for the funds she has lost?

The recommendation is found on page 2 of the synop-

sis that you have. I am asking that Ms M be compensated in an amount of \$1,147.05, plus interest on the amount of money there, \$2,299.16, which was the amount of the income tax refund she would have received had the garnishment been in place, and interest on \$1,147.05 after the date of September 6, 1991, until the date that compensation is paid.

How did I arrive at that amount of money? I've said that she may well have received the income tax refund of \$2,299.16 had the garnishment been in place. What I have done is said yes, Ms M did make an agreement to settle for 50 cents on the dollar. Consistent with that agreement and her willingness to mitigate her losses, I too have taken that and made it 50 cents on the dollar and asked for compensation in the amount of \$1,147.05.

It is open to the committee, of course. I hope the committee sincerely will support my recommendation for compensation. It is open to the committee to recommend a higher figure. I leave that in the committee's hands.

I'll stop there now and respond to questions, if I may. **The Chair:** Thank you, Ms Jamieson. Any questions, especially on the opposition side?

Mr David Ramsay (Timiskaming): Ms Jamieson, thank you very much for your presentation. I must say it's extremely thorough and really answers all the areas that I would have questions on. You've really covered the area of reasonable attempt: Did the plan make reasonable attempts to recover the arrears, and did they do that in a timely manner? I think you've answered that.

One of the things we have to determine is, was there any loss suffered by Ms M? For that, probably we'll all have to reach to our own personal experience and experience of other people of what it's like to be a single mom out there trying to raise a family, what it was like before there were government mechanisms to support people, the faith now that single parents would put in our support plan to help them with that, and if that faith had in a way been betrayed by the lack of action, and the lack of action in a timely manner.

In a sense, when I look over the synopsis, I think that maybe there were even two delays. Maybe the first delay was not getting the initial action up and running: If Ms M came in January 1990, it wasn't till February 28 that the plan initiated the renewal of the garnishment. The second delay is when, once received on March 1, 1990, it basically sat on a desk in the regional office for the whole month of March, till March 27. Nobody disputes those facts, that there is a substantive delay there.

Obviously I'll have some more questions for the plan when it presents its side, but you make the point that the plan is probably going to make, that it's not the responsibility of the plan to pay. But it seems to me why we set the plan up in the first place is that it's the responsibility of the plan to collect when there's default. That's what it's there for. It failed to do that.

The next question in my mind is, was it reasonable on Ms M's part to conclude, after the failure of the plan to collect the tax rebate—was this money ever going to be collectible? We have to consider that and also try to consider her circumstances at this time.

#### 1110

This is not something, the situation of a single mom with two young children, where one can conclude, "Well, as long as I get the money some day, it's okay." I guess we could all argue, and I'd probably agree with the plan, that she probably could have gotten the money some day, maybe. But the point is you need it today, because the kids need running shoes and they need clothes. You need it in a timely manner because you've got growing kids. Now is when you need it. You don't need it maybe when the kids stop growing etc. So I think that needs to be addressed also.

Basically, I've just made these comments based on your presentation and I can reserve most of my questions for the plan when they make their presentation.

Ms Zanana L. Akande (St Andrew-St Patrick): Thank you very much for that presentation. Though we're focusing on one issue and one case, this particular case, it seems to me that what we're really discussing is the accountability of government offices for their actions, if we generalize it—certainly that addresses the floodgate argument—and saying, how accountable should government offices, whatever they be, be for their actions? Then we come down to the question of judgement of the appropriateness of those offices' actions. Obviously in this case that's your role, and you have done it and done it well.

I think there is a need to look at it even more widely. That's not to dispel this and say we don't have to talk about this, but to look at it as an example. Would you see the appropriate person for judging the appropriateness of government offices always to be the ombudsperson?

Ms Jamieson: Certainly not. There are many people who are in that business beyond the Office of the Ombudsman, not the least of which is every member of the public and so on. My task is purely to look at a case that comes before me, a complaint, to see if it's well founded, and if it is well founded, to come up with a recommendation that would put the situation right for the individual involved.

**Ms Akande:** Then if there are others in similar situations and they do not come to the Ombudsman, they of course would do without or their case would be brought to the same kind of situation that this one is.

**Ms Jamieson:** Perhaps I should say that whenever we look at a case, we try to look beyond the individual case to the implications for others. That's why we focus so much on recommending improvements to the system, so that other people don't have the same difficulty.

If you're asking me if there are other Ms M's out there, there may well be. My investigator went through, at the regional office, 41 files to see whether Ms M was an isolated case or not. What we found as we looked randomly at those files was that out of the 41, there were about 20 where there were interruptions in the federal garnishment, and out of those, 15 occurred pre-1990 and five occurred in 1991. What I don't know is whether in that interruption there are other people out there who took steps to settle for less than what was due to them because of the failure of the family support plan to act.

Ms Akande: Or who received no settlement at all.

Ms Jamieson: Or who received no settlement at all. Now, should those people come forward to me, say after tuning in this morning, I would look at each case on its merits and see what were the factors, what was to be considered, and would reach fresh conclusions.

Ms Akande: That being the case, and looking at it from the floodgate argument—not that I'm posing it, mind you—if in fact there were people who found this channel so exciting that they were informed by it—there may be; stranger things have happened—and they did begin to come forth not only in terms of the family support plan but in terms of other ministry business that was analogous to this situation, you may experience much more demand for your services if there are no other—and I'm adding the term—"official" people who should or would be doing what you do for the government.

**Ms Jamieson:** Of course, there are lots of options available to the public. They can sue; they can go to members. One of the options is to come to me.

It is not unusual for us to investigate a case, to find that government failed and to ask government to compensate. It is not unusual for government to accept that responsibility and to compensate. This case is clearly an exception, where it's very clear to me that compensation is due. What's extraordinary to me is that there's an unwillingness to provide it.

Mr Len Wood (Cochrane North): Thank you for your excellent presentation. You've brought forward a lot of details.

I have a brief question concerning the two refunds that she was supposed to have received from income tax that you said failed to get into her hands, but from that time until September 6, 1991, when she reached an agreement with her lawyer and with her ex-husband, there should have been another income tax refund during that period of time prior to September 6, 1991, or even after that.

I'm just curious whether she received at least one income tax refund cheque if there was a refund available, or if she received another one from that point until now. There should have been at least one prior to September 6, 1991. If her ex-husband is still working and income tax money is being refunded to him and in turn turned over to her, what transpired with that amount of money, if it did happen? I'm wondering if this had anything to do with her reaching a settlement on September 6, 1991.

**Ms Jamieson:** It is in fact the case that the 1990 refund formed part of the settlement agreement that was signed in 1991. So that was part of the agreement subsequently signed.

There were two refunds that I spoke to. One she did not receive because the garnishment wasn't in place in the first case in enough time to get it. The second time she did not receive it because the support plan did not take timely and appropriate steps.

Following that, there was a refund considered as part of the settlement agreement, and I can't give you an exhaustive look from then until today because my findings are as at that point in time.

I can tell you that up until November 1991, and this

speaks also to an earlier point raised by Mr Ramsay, what the plan was able to get for her by the federal garnishment. They got \$72.50 on March 12, 1991. They got \$132 on September 20, 1991, and on November 4, 1991, they got a further \$132. This individual had, at the time she reached the settlement agreement, almost \$10,000 outstanding in arrears.

#### 1120

Did she have a hope of ever receiving that based on the experience that she'd had with the plan? I'd say it's a very tough argument to put forward. Having started the plan with \$9,000 owing in arrears, and three years later actually still greater arrears owing and no arrears coming in when she signed the agreement, what do you think the level of her confidence was that she'd ever get it? I'd say on the negative scale.

Mr Martin: I wanted to take a little different tack. To me anyway, it seems we've somehow forgotten the real culprit in this, which is the payor who, in my mind, has achieved some relief of his responsibility through this whole process. There's no reference in here, although I suppose that's not your mandate, in terms of how we get retribution.

Certainly you've made a case for the plan not being diligent in doing its job, and I accept that and recognize it and sympathize. But in this situation this payor obviously was paying attention to what was going on, what was available to him. He obviously had a lawyer if she had a lawyer. There was an insurance company somehow involved here, it seems to me, and there was a window of opportunity re the garnishment coming off and going on again where he got in and got that money. He knew what he was doing.

In this case we have a person who again has been able to manipulate the system. He has been manipulating it all the way along, it seems. This woman was not getting her rightful due, according to the court order that was put in place. There was a backlog of moneys owed, and he found a way through this with the payee—I guess that's the word you use—to lessen the contribution he has to make.

I'm wondering what we would be saying in this by doing what you're recommending that we do here re that whole question of who is ultimately responsible. Who is it we're trying to get after re this plan? In my mind, the question I have is how doing what you're recommending here gets us any closer to actually making this thing work, which is, in my mind, making those people who are responsible really be responsible and pay what they owe.

Ms Jamieson: I think there are two things I would say to that. One is that I said earlier I'm looking at the relationship between this individual member of the public and the government department she was dealing with. I am asking the family support plan to compensate her for their failure. I don't think it's an excuse for them to then say, "Oh, but it's the payor who was supposed to be paying."

The whole reason why you created the family support plan, why it was created, is because we know full well payors were not fulfilling their responsibilities, their support obligations. The family support plan is created to make sure that they do, and they're asked to take practical steps to make sure that they attach whatever funds are available to get those obligations paid out of a sense of justice, out of a sense of providing some support for single parents and children.

Having said that, I think they do bear a responsibility to do that job up to a reasonable standard. I have found in this case that they did not do that and I am asking them to compensate Ms M because of their failure. It's their failure in this case that I'm focusing on. I don't think it's a legitimate excuse for them to argue that ultimately it's the payor's responsibility.

If that's the case, why do we have a family support plan and what faith should we put in them? What standard can we expect them to uphold if they are an administrative office that forwards payments when they come in? I think there's a higher standard of service that we are entitled to expect of them, at least a reasonable one, and that was not met in this case. It's for their failure I'm asking that.

In trying to figure out what their failure is worth in terms of compensation, I have to look to what Ms M lost. I've looked at what she lost and I have even discounted that by 50 cents on \$1, using the same thinking she used in entering into the settlement agreement with the payor.

Mr Martin: Could I just-

**The Chair:** We haven't got any time. We have to allow the other deputation to make their presentation and then we have to allow you to ask questions.

Mr Martin: Yes. I just want to follow up—

**The Chair:** Again, there isn't much time left. Mr Ramsay asked for a brief question again, if you really want to do it.

Mr Ramsay: Just a statement about Mr Martin's comment that it really is a total abdication of any responsibility of government. This is why we have government agencies. We should not harm people. We should not rob people or murder people, but this happens in society and we entrust agencies of government to enforce law. It's the same thing here. There should be accountability to those enforcement mechanisms, or why have them in the first place? That's part of our job as legislators.

The Chair: A very brief question.

Mr Martin: A brief response and question, yes. I understand what you're saying. However, it seems to me that, if a society's going to function properly, people have to be encouraged to live up to their responsibilities and not have to turn to government to deal with those.

You have a situation here where yes, government set up an instrument to have justice done, but our job, I think, is to make sure that in fact justice be done as much as we can without the intervention of government and, in my mind, doing things that let the real culprits off the hook, which is what we're doing here in this case by putting the blame on government.

I don't disagree that government carries some of the blame, but the precedent you're setting which says to people out there, "Be diligent," which is what they've always done, the payors in these situations. We have a history of people trying to find ways not to have to live up to their responsibilities. Now we've found another way, which is to blame it on the shortcomings of government agencies.

I'm asking where the balance is. I understand the Ombudsman's job, which is to focus on whether government did its job or not, and in this case you've pointed out that in fact it didn't. We as legislators, however, have to look at a bigger picture and the picture is, is justice better served by following the recommendation you've made here or by somehow making sure that the real culprit, the payor, is made to live up to his responsibility?

In this case, if we set a precedent here, which is the floodgate argument, then what are we doing? Are we saying to people out there that you take these other routes and, in the end, the people who pay are the people of Ontario as opposed to the person who owes the money in the first place?

Ms Jamieson: Just to conclude, I would say once again it really comes down to a question of responsibility. Is government obliged to accept responsibility when it fails to meet a reasonable standard of service to the public? I think so, yes, and I think part of that responsibility includes making whole people who've lost irrevocably as a result.

#### 1130

If we cannot rely upon government to set the model, to set the standard in doing that, it seems to me to be a very difficult thing to look out to the public and expect that standard of behaviour. I believe government has to set the standards and be held to them.

Is there something to be done here to hold the payor accountable? Yes, and I believe that's why the family support plan was created. Having done that, is there something else to be done when government itself fails? I think the answer to that is similarly yes, when its failure has resulted in a loss to an individual.

These circumstances are particularly compelling to me, given the personal circumstance of the people involved. I think that makes it even more acute that government be aware, that government be diligent, that government do diligence and do its job, particularly when it's dealing with this clientele. If we cannot expect government to be acutely aware in these cases, I think it's a very difficult standard to uphold generally.

I would urge the committee to accept and support the recommendation I've put forward and urge the government department involved to compensate Ms M in the amount I've suggested.

I understand that, after I leave, you may be hearing from the ministry. I would hope that next day when we meet, if there are issues that are raised by the ministry, as with today I would similarly have an opportunity to respond before you might reach your ultimate conclusion. I'll look to the Chair to hear some further word on that.

Thank you for your patience and your attention.

**The Chair:** Thank you, Ms Jamieson. We will proceed with the director of the family support plan, Ms Vidal-Ribas. You can proceed.

Ms Victoria Vidal-Ribas: Members of the committee, I'm Victoria Vidal-Ribas. I'm the director of the family support plan and I am here to answer some of the issues that have been raised by the Ombudsman in her presentation today and to put before you the ministry's position in the matter of Ms M, which is the matter before the committee this morning.

The Ombudsman has spent a considerable period of time this morning talking about accountability and responsibility of government and the need for government to be accountable and responsible for its actions.

I can say to you on behalf of the plan that on the philosophical level that the Ombudsman is advancing, a need for government to be accountable and responsible, the plan is in a position to agree with the Ombudsman. Where we must part company with the Ombudsman is in the level of responsibility and accountability that's applicable in this particular matter.

In her report the Ombudsman identified concerns in two areas: the case-specific concerns that were discussed at length with you this morning and, in addition, some systemic issues. The Ombudsman in her remarks was good enough to acknowledge that the plan has addressed the systemic issues. I can tell the committee what specific steps have been taken.

Since the issue of Ms M was brought to the plan's attention, the province has worked with the federal government, and federal garnishments are now in place for a five-year period rather than a one-year period, and that is to minimize the opportunity for matters to slip between the cracks of the system and to allow for a more effective and efficient support collection system.

In addition, the Ombudsman in her remarks identified certain concerns about the practices of the plan's regional offices, the support and custody orders enforcement plan, as it was at the time. I can also advise the committee that steps have been taken to ensure that federal garnishments and other enforcement proceedings are dealt with in a timely and reasonable fashion. Some of the administrative issues that were identified by the Ombudsman in her report have been addressed.

In addition, the plan has looked at making sure that the necessary backup is available to maximize the opportunities for smooth enforcement with no breakage in the time from activity to activity.

I wish to bring this to the committee's attention, because I think it's important, as we discuss the reasonableness of the ministry's actions in the case of Ms M, to look at at what point we are assessing the reasonableness of the actions.

At the time the Ms M matter came to a head, in January 1990 and in the months following, the program was three years old. It is important that we not measure the program as it existed then by the standards that we would impose today in a program that is now seven years old, much more fully mature and having learned from the experience of those early years.

It is regrettable that the garnishment in question missed the income tax return. It is unfortunate. There was a difficulty in the dates, and it is regrettable that one day was the difference between the securing of the tax return and not. However, the plan must depart from Ms M's view that she was entitled to lose faith in its ability to collect the moneys for her.

The reason for that is there was a wage garnishment in place, as the Ombudsman has indicated in her remarks. That was remitting on a reasonably regular basis. The plan, as you know, has no control over the income levels of the payors. The change in the income level being received by the recipient, Ms M, reflects the change in the income level that the payor was enjoying as a result of various changes in the payor's employment situation.

The plan assessed how long it would have taken Ms M, based on the payments that were being received for her, to fully realize the amount of the arrears. Our calculations indicate that she would have been fully paid up on the arrears by June 1992 had she not settled with the payor, as she did in September 1991.

It is true that, in the case of all recipients, having the money today is better than having the money tomorrow or the tomorrow after that. However, the plan is in the business of collecting payments from the payors, and it is not—unfortunately or fortunately, depending on how you look at it—in a position to be guaranteeing a certain income level. The responsibility for payment is the responsibility of the payors.

This particular recipient had a remedy available to her. Had she stuck with the remedy of working through the wage garnishment, she would have had the payment in full by June 1992. In fact the plan continues to take enforcement action on behalf of this particular recipient.

To require the plan to compensate this recipient, as suggested by the Ombudsman, would have the effect of putting the plan and the ministry in the position of becoming a guarantor when payors do not pay. That is not the intent of the family support plan; that was not its design; that was not the design of its predecessor program. I would urge the committee to consider what the implications of recommending a payment would be for this program in the circumstances, because it would put the program in the position of being the guarantor.

There were changes in the order that were applicable to the individuals in this case, and that accounts in part for some of the variances in the payments that were being received. The Ombudsman, in her remarks, has alluded to the floodgates argument. That is a very tempting argument to engage in. I think I will simply address a few comments to the floodgates argument.

In this case we have an individual who drew her own conclusion about the participation in the plan. That is something that a recipient or a payor is entitled to do. The recipient drew the conclusion that what would benefit her situation the most would be to reach an agreement with the payor that the arrears ought to be fixed at a certain amount and that she would take a lesser amount than the full amount that was owed to her. That is the right of the recipient; she is entitled to make that decision. She had the benefit of legal counsel, as the Ombudsman indicated in her earlier remarks. So we have here a fully informed recipient.

It's the plan's position that, having made that decision, the recipient is responsible and accountable for her own actions in having made the decision to take a lesser amount of arrears and that it is not the plan that should be held responsible and accountable for the recipient having made that decision. That would be an unreasonable standard to hold the family support plan to and to hold the ministry to.

The legislation that governs the family support plan is a bit unusual in some of its language. It provides a fairly significant degree of discretion to the director about proceeding in a manner that is practical to enforce. There are a couple of sections in the statute that speak to the discretion of the director to assess what is practical as an enforcement remedy.

#### 1140

In this case, this recipient was one of the luckier recipients, in a way, because the payment of the arrears would have been made; she was an unlucky recipient in that it wouldn't have been made in a timely fashion because the obligations weren't being met by the payor, as set out in the court order.

In looking at the actions of the plan, it is important to look at the actions taken in 1990 against what was practical and reasonable for the program to be doing at that time. It is the submission of the plan and of the ministry that to hold the plan responsible for compensating this recipient for the arrangement regarding the arrears that was made is not a reasonable action because the plan did what was practical in the circumstances.

It is unfortunate about the income tax refund. In answer to why it took so long, my response to this committee is that the plan was in its infancy and it was doing what it could with the resources available to it. It has learned from this experience and from others and has improved its processes and continues to improve them. As a result of this case and other matters that the plan was looking at at the time, it has also instituted a three-and-30 policy, which is action within three days on hot tips, which is what this would have been classified as, and action within 30 days on other matters.

The Ombudsman has indicated that when the government falls short in its actions, the government should be held accountable and the government should compensate individuals in appropriate cases. I can advise this committee that in fact the plan has paid compensation in cases where the plan has felt that there has been a justified claim for compensation.

This is not a situation of a government program simply refusing to acknowledge its responsibility or its accountability for errors. The position of the plan and of the ministry is that this is not an appropriate case in which compensation ought to be paid. In cases where it has been paid, there has been a clear error on the part of the plan, and that error has been acknowledged and the payment has been thought to be the appropriate remedy.

The Ombudsman, in her remarks, talked about this as a simple question of responsibility. There is responsibility on a number of fronts here. As the committee indicated earlier in its remarks, there is the responsibility of the payors to make the payments to which they are obligated by a court order or by domestic contracts or any other arrangements that are made. It's the responsibility of the plan to take whatever steps are practical to enforce the support that is owed, and it's the responsibility of the recipient to be a participant in the plan. In fact, this plan is successful in part because of the participation of the recipients and the information that the plan is in a position to receive because of the participation.

This is a fact situation with responsibility on a number of fronts. It's important to be aware that the responsibility is not simply on the part of the ministry here, but there is responsibility elsewhere in this fact situation. I reiterate again, Ms M is certainly at liberty to have made the arrangement that she made with the payor in this particular case. However, it is the plan's position that it is not the plan's responsibility to compensate for the difference in the payments as a result of the arrangement made by the recipient in this case.

It is in fact the responsibility of the plan to create, set and maintain standards, and that is something that the plan has been working at vigilantly over the past few years as the program grows and develops and comes out of its infancy. In fact, I think it is fair to say that the plan has made quite remarkable strides in improving its service, and over the past two years, with the recent set of legislative amendments, there has been a remarkable increase in the amount of support that is collected for individuals. The submission of the ministry is that the plan is meeting its responsibility to create and maintain standards and it is working to those standards.

In taking the enforcement action that the plan took in this particular case, the ministry, through the family support plan, or the support and custody orders enforcement plan at the time, took adequate steps, and in fact, as I indicated earlier, this recipient was realizing funds as a result of a wage garnishment. So in answer to the Ombudsman's concerns that adequate and appropriate steps were not taken in this case, the plan must differ from the Ombudsman in that position because there were appropriate steps taken.

We had here a payor who was resistant to making the payments. There was execution in place. There was execution available that would have realized other funds. There was in fact some exchange with the federal government the following year about income tax refunds and so on. This is not a case in which the plan failed to take any adequate enforcement action for this particular recipient.

It is unfortunate that recipients find themselves in the position of facing significant arrears that are owing to them. However, that is a reality of this kind of business, of the support business. It is the plan's responsibility to take reasonable steps, practical steps, to realize on those arrears, and it is the position of the ministry and of the plan that those steps were taken.

The Ombudsman is right: There were substantial arrears here and the income tax refund would have gone some way towards collapsing the arrears earlier than they were going to be paid out through the wage garnishment. But again, I must stress to this committee that the arrears,

according to our indications, would have been paid in the end, and so it is a question of a recipient who would have received her funds. So it is not reasonable for the plan to be held to the standard that the Ombudsman is seeking to hold the plan to.

In terms of what the plan is able to do, the Ombudsman in her remarks alluded to some overpayments that were returned to the payor and were not applied to funds for the recipient. I would remind this committee that the plan is only in a position to enforce what is available for enforcement under the court order. So if the plan is not able, by the terms of the court order, to apply any overpayments to the arrears, and at the relevant time the court order was fixed at a payment of \$50 towards the arrears on a monthly basis, then the plan is required to return the funds to the payor.

It would be a happy situation in many cases if the plan were in a position to say, "There has been an overpayment and therefore we will apply it in this fashion." However, that is not always possible, and I would urge the committee to remember that we in the plan are bound by the provisions of the court order and so are limited by the parameters of that order.

The Ombudsman very thoroughly, I think, canvassed the fact situation for the committee, and I don't propose to spend a great deal of time reviewing this fact situation other than to say that we have here a recipient who was receiving funds and continued to receive funds and to this day continues to receive funds as a result of the actions of the family support plan. So the responsibility for the decisions made by the recipient here are the recipient's and not the family support plan's.

Those conclude, I think, my formal remarks, and I'm happy to answer any questions the committee might have.

Mr Ramsay: Thank you very much for your presentation. I was wondering, at the time this took place—and I know your policy has changed—what policy did you have in place in regard to the reception of hot tips?

Ms Vidal-Ribas: The policy at the time was, to put it in a colloquial term, a first-in, first-out policy. When a matter was brought to the attention of the program at the time, things were acted on on a chronological kind of basis. That was assessed, and it was thought that it was more effective to separate regular matters that could be acted on on a chronological basis as opposed to hot tips, and that's why the change in the hot tips policy was implemented later in the year.

1150

Mr Ramsay: When I look at the synopsis, I guess it was some time in January 1990 that Ms M informed the plan's regional office that she had been advised by her ex-husband that he was potentially in receipt of a substantial income tax refund. At that time she was given assurances that the plan had a federal garnishment in place. Do we know in detail what happened there? Was it at first the thinking of the plan that, because there was one in place at that time but it was to expire in the spring of that year, that would probably cover it?

There seemed to be some inaction there, as I outlined for the Ombudsman. There seemed to be two delays

there. It wasn't till the end of February that a renewal of federal garnishment was initiated by the plan. Then of course there's the second delay where, upon receipt of the court, from March 1 to March 27, the renewal document remained at the regional office. This process didn't really seem to proceed in a timely manner. I think that's really the crux of the argument here.

Ms Vidal-Ribas: The federal garnishment that was in place in January 1990 did not expire until almost the end of April, April 26 or 27. So at the time that Ms M contacted the office and indicated that there was an income tax refund owing, there was every expectation on the part of the plan that the federal garnishment would stay in place until its expiry date and that at an appropriate time there would be a renewal of the federal garnishment.

If we do the calculation, on February 28 the program sought to have the federal garnishment renewed. That occurred. The order was available on March 1. There is then a little bit more than a three-week lag until the federal garnishment is sent out, and then it is almost exactly 30 days from the date that the federal garnishment leaves the program's office until the expiry date. So it leaves on March 27, 1990, from regional office; the expiry of the 1990 federal garnishment order, if you will, is April 26, so we have a 30-day period.

The delay in processing the renewal in the February 28-March 1 time frame is entirely consistent with what the appropriate process would have been. The difficulty we find with this fact situation comes in the March 1 to March 27 period during which the garnishment was in the regional office.

As I indicated earlier in my remarks, the plan was in a state of transition and in a state of growth at the time and did not have the processes in place that it currently does. So it is an unhappy coincidence of timing. Had the timing been a little different, in fact the federal garnishment would have been in place and the funds would have been caught. We're only talking the difference of in essence a day with the renewal of the federal garnishment.

Mr Ramsay: I know we're always looking at improving government processes. We're always in renewal, and that should happen constantly. We should always be trying to do a better job for the public. Many times when we're in those processes of renewal, things do get disrupted. That's an unfortunate part, but maybe that's a normal part of trying to improve the system. During those periods, is it really acceptable that there is a loss of service or that people suffer or that a loss occurs that maybe people feel they're not going to ever recoup? Don't we have some responsibility, even as we're trying to improve the system, that we at least try to keep a minimum level of service in place?

Ms Vidal-Ribas: I would agree with you that it is important to keep a minimum level of service in place. I think the issue here though is whether or not the actions of the program were reasonable given all of the fact situation at the time. Certainly the program would not take the position that it is appropriate for there to be significant lapses in the level of service, but you must

look at it against the overall reasonableness standard against which the plan is to be measured.

Mr Ramsay: How would you compare this time frame that it took, I guess through March and into May, to May 8, in this particular garnishment to how it would go today? What would the time frame be today if Ms M were to walk into the office today under similar circumstances?

Ms Vidal-Ribas: Effective February of this year, federal garnishments are in place for five years, so it is a much less labour-intensive exercise than renewing federal garnishments on an annual basis.

To give you an idea of the numbers, the plan currently has a case load of 126,000-plus cases. If you have federal garnishments in only half of those cases and they need to be renewed on an annual basis, you can imagine what the workload would be. So that is one of the reasons. Multiply this by the 10 provinces and the two territories for the federal system. So you can imagine what the volume is of federal garnishments.

The process now is in place so that there is a bringforward system that is clearly developed and we have necessary backup. So if the enforcement officer who is responsible for the file is away or ill or not around for some reason, matters proceed in a more timely fashion. It still takes 35 days to get the things registered.

Mr Ramsay: You said, in regard to the arrears, that the plan had the remedy in place and that the garnishee was in place and that moneys were coming from the wages of the payor. But you also alluded to the fact that—for different reasons, different employment opportunities, because of the sick leave of the payor—there was quite a bit of inconsistency in the amount of money coming in from the payor.

So, yes, the remedy was in place, but it seems to me that Ms M, looking at the situation and looking at the arrears really not diminishing in any way, in fact increasing somewhat over this time period, and then seeing this big chunk of money slip through the crack, the rebate—one could sense why Ms M had the feeling of hopelessness. You say by June 1992 she would have recouped all this, but she had the sense of hopelessness that she wasn't going to get caught up, that in a sense she was falling further behind. It seemed to me it would be a fair and reasonable assumption that she would assume she'd better cut a deal on this thing to try to get caught up, because she just wasn't going to get caught up.

Ms Vidal-Ribas: I think the plan must differ with you there about whether it can agree that it was a fair and reasonable assumption. The plan's position is that it was not a fair and reasonable assumption. Ms M is certainly entitled to her own view of it, and she's entitled to act based on her own view. The plan is not in a position to agree necessarily with Ms M's view or to say that because Ms M makes certain decisions the plan ought to be held responsible for the consequences of those decisions or to compensate for the ramifications of having made those decisions.

Ms Akande: It's often that problems or errors in the system initiate change, and for that I must commend you,

that these changes are in place and that in fact you're doing things so that this won't happen again. It doesn't, however, erase that it has happened.

If I can draw an analogy between the plan that was in place for three years, relative infancy, and a new lawyer and an experienced one, would you indulge me? If I hire a newly called lawyer and he or she misrepresents me, would I somehow be called to consider in my decision to sue him or her the fact that he or she was newly called to the bar? It's a rhetorical question. I think not.

In many ways, the plan operates like a lawyer in that it's an intercession between the payor and the person who is receiving those funds, and, like lawyers, those people who work in those offices are paid for the services they are expected to give. I think they're paid because the service is certainly important, and one of those services includes the timeliness of the services they give.

What we're talking about is 27 days somewhere in the system after a person had gone to the office and said: "This is coming. Please don't let this happen to me so that I miss it." What we're talking about is, to me, a consideration of the need of the person who made that request. I think we would be prepared to say that perhaps that person had worked or operated, let's say, early, if in fact it were a different situation and the money may not have been as necessary.

#### 1200

But if we look at this without thinking in terms of a single parent in need, suffering arrears already, albeit that your service of the plan was making sure that she did receive some support, we can't ignore the circumstances of the individual in cutting the deal. I always loved that expression, "cutting a deal." It makes it sound so crisp, when in this case it's really the last resort of a person who needs the money.

Now, you make the point that the plan cannot be a guarantor of payment. It cannot be expected to guarantee payment. But it can be expected to guarantee efficiency in providing the services that they do. Though I acknowledge, and I do acknowledge, that every service has growing pains and that in fact your service was in the midst of those growing pains, I find it difficult as a person who pays the salary of those who run the plan, in terms of my taxes, to accept that one of us should suffer adversely when those people who are paid have not operated efficiently.

Ms Vidal-Ribas: If I might just develop your junior lawyer and senior lawyer analogy a bit, I would say to you that the standard to which we hold members of the legal profession is a different standard than the standard to which the plan is held under its statute. So there is an obligation certainly on members of the legal profession to say to you as a client, "I cannot do that piece of work for you because I don't have the expertise," or "It's too senior," or "It's too complex," or whatever the issue is.

Having said to you, "Yes, I can represent you," then you are, I think, entitled to hold me as a lawyer to the same standard that you would hold another lawyer, and the law does not differentiate between junior and senior lawyers in the way that you were alluding to in your

remarks. I think that's an accepted principle of legal tradition and the legal profession.

If what we are doing is looking to hold the plan to that standard, then we are changing the standard under which the plan is established, has operated and currently operates. To follow through on that analogy a bit further, the plan has the responsibility under its statute to do what is practical in the circumstances. So we are talking, I think, about a different standard for junior and senior lawyers against which we measure their activities, from the standard against which we would measure the activities of the plan. That is sort of the broader comment.

In answer to your specific question, the plan cannot accept fully the position that there was a complete lack of efficiency here. Steps were taken to renew the garnishment; steps were taken in a timely fashion to renew the garnishment. The garnishment was sent to the federal government and it could have been processed in good time. As it happened, it was not. It was sent to the federal government fully a month before the previous garnishment was to expire. So we do not have here the situation of a program that allowed April 26, 1990, which was the expiry date of the original order, to come and go before any action was taken at all, let alone sending the renewal of the garnishment to the federal government.

With respect, I think I cannot agree on behalf of the plan with your assertion that there was a lack of efficient action here. This is a case in which the plan did act, and it acted within the time frames that were necessary to renew the garnishment. It simply was not renewed within the time frame necessary to secure this income tax payment.

Mr Martin: I just wanted to lay out the scenario as I see it, so that you might respond to it and tell me if I've got it right. The new information that you bring to the table is the fact that there was a plan in place by court order that would have seen this lady, the payee, get what is her due, including arrears, by 1992. There was a plan in place that every month—and that was being followed through. You were successful in garnisheeing the money and it was coming, it was happening, it was unfolding as laid out by the courts. Is that correct?

Ms Vidal-Ribas: Yes, sir.

**Mr Martin:** There was this opportunity to make that happen quicker—

**Mr Ramsay:** Can I say that's probably not— **Mr Martin:** Excuse me, you had your chance.

The Chair: Let Mr Martin finish.

Mr Martin: There was this opportunity that came up that the payee recognized. There was an income tax repayment that was coming that she felt she had a right to access and she asked for a garnishment of that. But it was not part of the original plan; it was a new occurrence. But this money that would have come to the payee would not have increased in any way what she was due in the end, what she would have gotten by the time 1992 arrived and the plan would have played itself out. Is that correct?

Ms Vidal-Ribas: If I understand your question correctly, if the federal income tax payment had been

secured, it would have accelerated the date at which the arrears were brought up to date.

**Mr Martin:** Okay, but it would not have gotten her any more money.

Ms Vidal-Ribas: No.

Mr Martin: The opportunity was missed. We can probably argue back and forth about who was responsible for that. You suggest that you had it in a full month before the garnisheeing was up, and I guess that happens. I know of the stress that was on the system at that particular point in time, being that we had a new plan in place and people were trying to get up to speed and put it together.

In fact, the stress on the system was put on by the fact that we hadn't up to that point in Ontario come to terms with the very difficult circumstances that we were putting people under by not moving to do something of this sort until that time. There was a big backlog of things that needed to be taken care of.

There was stress on the system. There certainly was some stress put on the payee in this circumstance by the fact that she didn't get this chunk of money that she thought she might be able to get her hands on. She then, under advisement by a lawyer, in partnership with the payor, who also probably had a lawyer—and it seems to me there was an insurance company involved here of some sort. I'm not sure how that plays here, but there was the presence of an insurance company.

In the end, the payor ended up paying half of what he would have paid had the plan worked itself out to 1992 and the payee ended up only getting half of what she would have got had she stuck with the plan that was put in place by the courts. Now she's coming back to the government to get the other half.

Ms Vidal-Ribas: Yes, sir.

Mr Martin: The winner in this, in my mind, if there are winners in these circumstances, certainly is the payor, who was the reason this circumstance was set up in the first place. We're now being asked to make up for that and set in place, by precedent, a process that many others could simply take advantage of and, in the end, allow for another loophole in this system that we, by setting up the family support plan in the first place as it is now, are trying to get rid of.

1210

Ms Vidal-Ribas: That is certainly a possibility. In this particular case, the payor found himself not required to pay the full amount of the arrears that were owing to the recipient. I think it's fair to say that there are other payors and recipients who participate in the program who, for their own reasons, come to some accommodation about the amount of the outstanding arrears in order to perhaps realize the moneys today as opposed to tomorrow or some time after that. The result was, yes, this payor in the end paid less than he would have had to pay had the process worked itself through to the finish.

Mr Mike Cooper (Kitchener-Wilmot): Let's get back to the legislation here that sets up the family support plan. Is there a five-year review built into the legislation?

Ms Vidal-Ribas: A five-year for garnishments?

Mr Cooper: No, when the legislation was passed, right in—

Ms Vidal-Ribas: You mean a sunset provision in the legislation?

Mr Cooper: Right, for a review.

Ms Vidal-Ribas: No.

Mr Cooper: I know in a lot of legislation we're doing now, the opposition has really been pushing for there always being either a three- or a five-year review. I think that's an admittance that when we set up a new thing, it's not going to be exactly right. You said there have been legislative changes made after four years?

Ms Vidal-Ribas: Yes. In fact, on March 1, 1992, the Family Support Plan Act replaced the Support and Custody Orders Enforcement Act. That act introduced a number of enhancements to the program, including automatic wage deductions and support deduction orders to allow for regular remittance by income sources such as employers and so on to avoid the necessity for active enforcement action. There were a number of enhancements after the program had been in place for five years.

Mr Cooper: Contrary to what Ms Akande has been saying about something being set up and we expect it to be exactly right, a lot of the legislation we're doing now will have a five-year review plan in it so that after five years of any plan or service being provided, it will be reviewed to see where the problems are. So I don't see that we have to take ownership of this, that from day one it should be set up, as you stated, that it would be perfect.

Ms Vidal-Ribas: From an administrative standpoint, the plan is always looking at how it can do things in a more efficient manner without the need for legislative change. It is an ongoing way of doing business that the plan tries to look at improving.

**Mr Cooper:** Back to the original, as the Ombudsman said, they pull 41 files and for 20 of them there were breaks in the federal garnishment at that time, but it had gotten better. After 1990, there were only five, but there were 15 before that. What's the difference? Was there a higher case load?

Ms Vidal-Ribas: The difference is that there were systems put in place in the regional offices to make sure that federal garnishment renewals were identified on as timely a basis as possible and that they were processed on as timely a basis as possible, including making sure there was necessary staff backup so that if the individual responsible for the renewal was away for some reason, the thing didn't sit until the individual came back from wherever they were.

In large part the change is an administrative improvement on how the plan does its business; very recently, as I indicated. We now have a five-year renewal which gives an opportunity for a longer time period and it's not quite so labour-intensive. That's what's changed.

**Mr Ramsay:** I'd like to ask a question based on my interjection when Mr Martin was speaking. Mr Martin was accepting as fact the statement you made that your projection of the moneys you were receiving, that Ms M. was entitled to, would be complete and caught up by June 1992.

That's obviously a projection, but you had said, based on the employment opportunities and the income the payor enjoyed, that of course it would vary. Of course, we had a sickness. We had one garnishee just slip through the system. On what assumption did you make the projection that everything would be caught up by June 1992?

Ms Vidal-Ribas: You're right that it is a projection based on the history of the file. The basis for the calculation was an analysis of the history of the file—the payment records, the payment amounts and so on—and then a projection into the future of, if the world continued as it had been in the last while, when the payments would be brought up to date, as with any support payment.

Mr Ramsay: I wanted to get that on the record because I felt that Mr Martin accepted that as fact, and we really don't know that for sure. I mean, that's a projection.

**Mr Martin:** It was the plan that was put in place by the courts.

Ms Vidal-Ribas: There was a court order stipulating how much the arrears were to be paid down at the time, so the analysis included looking at the court order and the payment history.

Mr Ramsay: It assumes also full employment, of course.

Ms Vidal-Ribas: It assumes a certain income. It assumes an income level, yes.

**The Chair:** Does the court order detail the timing and payments; a breakdown, in other words?

Ms Vidal-Ribas: If you will bear with me for a moment, there was a Supreme Court order dated August 1, 1990, which stayed enforcement on the arrears except for a payment of \$50 per week to be applied towards paying down the outstanding arrears. So until September 1991, which was the date at which the variation of the arrears was reached between the parties, that was the court order that was in place having to do with the payment of the arrears.

Mr Martin: Was it being honoured?

**Ms Vidal-Ribas:** Yes. My records indicate that it was being honoured.

Mr Ramsay: I'd like to ask you to submit the calculation that you made to come up with that projection.

Ms Vidal-Ribas: I don't have it with me, but I can certainly make it available to the committee.

The Chair: Thank you very much.

We had a request before by a member of the committee to meet in caucus for a few minutes. If this is the will of the committee, we can do that, and they may wait outside for a few minutes until we reach a decision.

The committee recessed from 1217 to 1222.

**The Chair:** We'll resume the meeting now. There is a decision by the members of the committee that apparently we have enough information for them to decide today without postponing it to another, further meeting. Mr Cooper wants to say something about it.

**Mr Cooper:** I'd like to move that we don't support the Ombudsman's recommendation.

Mr Ramsay: I would request that there be a recorded vote.

**Mr Martin:** Could I just make a brief statement in terms of how I'm going to vote?

The reason the change was made to the Family Support Plan Act was to make sure that people who had responsibilities and had been, through a court order, called to contribute so much to the upkeep and maintenance of a family continue to be held responsible for that. In my mind, to do other than what my colleague has suggested would be to get us back into a situation where the people of Ontario are going to be responsible for something that I don't think anybody would disagree they are not responsible for: the sustenance of families of those who were responsible for forming them in the first place. I think to vote other than in support of the decision made by the ministry in this case would take us back to where we were before we changed this system.

**The Chair:** Can I have a motion, then?

Mr Cooper: I've moved it.

**The Chair:** The committee is ready for a vote on the motion? What's the motion? I want to hear the motion.

**Mr Cooper:** A motion not to accept the recommendations of the Ombudsman.

The Chair: Okay. All in favour of the motion?

Ayes

Cooper, Martin, Wood.

The Chair: Against?

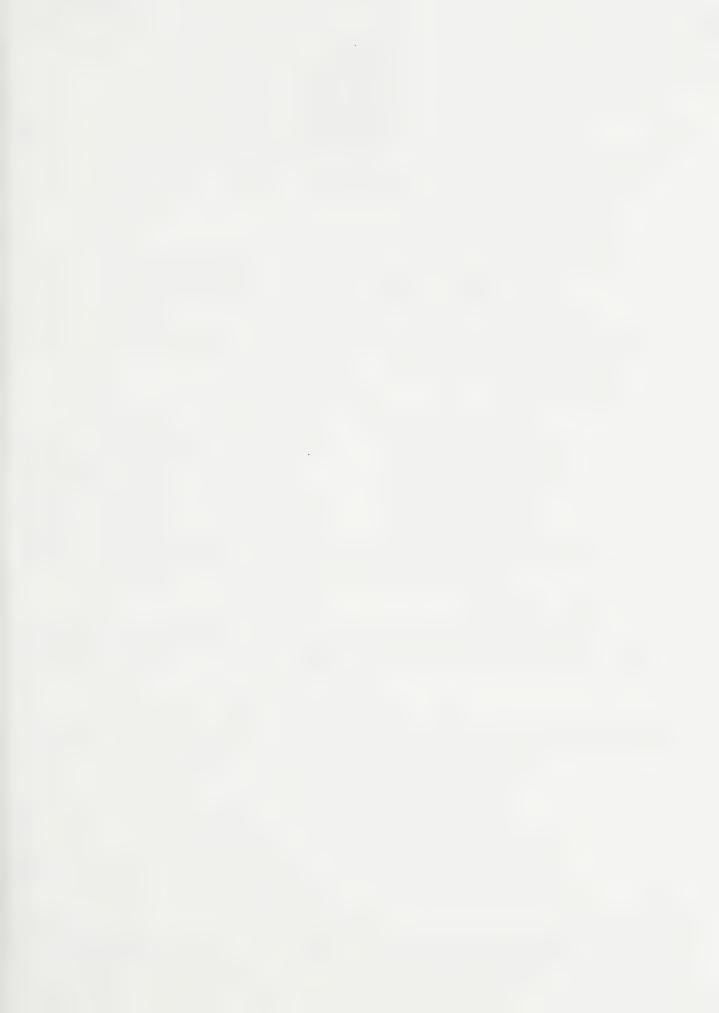
Nays

Ramsay.

**The Chair:** Thank you very much. The motion wins and the meeting is adjourned.

The committee adjourned at 1224.





# **CONTENTS**

# Wednesday 18 May 1994

Ombudsman special report on the Ontario Human Rights Commission	B-53
Ombudsman of Ontario	B-53
Roberta Jamieson, Ombudsman	
Case of Ms M	B-55
Roberta Jamieson, Ombudsman	
Victoria Vidal-Ribas, director, family support plan, Ministry of the Attorney General	

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Clerk / Greffier: Decker, Todd

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Murray, Paul, committee counsel and research officer, Legislative Research Service Swift, Susan, research officer, Legislative Research Service

<sup>\*</sup>In attendance / présents







B-9

B-9

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# Legislative Assembly of Ontario

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# Official Report of Debates (Hansard)

Wednesday 8 June 1994

Standing committee on the Ombudsman

Ombudsman special report on the complaint of Ms R



# Assemblée législative de l'Ontario

Troisième session, 35e législature

# Journal des débats (Hansard)

Mercredi 8 juin 1994

Comité permanent de l'ombudsman

Rapport spécial de l'Ombudsman sur la plainte de M<sup>me</sup> R

Chair: Tony Rizzo Clerk: Todd Decker Président : Tony Rizzo Greffier : Todd Decker

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

# ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 8 June 1994

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 8 june 1994

The committee met at 1000 in room 151.

OMBUDSMAN SPECIAL REPORT ON THE COMPLAINT OF MS R

The Chair (Mr Tony Rizzo): We're dealing with Ms R's complaint against the Ontario Human Rights Commission. We're going to start by listening to the Ombudsman, and then listen to the commissioner of human rights, Ms Brown, and then open for questions from the committee. Hopefully, we are going to be able to reach a decision today. If we aren't able to, we will go to another meeting next week.

#### OMBUDSMAN ONTARIO

Ms Roberta Jamieson: Good morning, bonjour, sago, committee members. It's always nice to meet with you.

This is the final case of the five cases I brought and tabled to the Legislature last year. We've dealt with one involving the Attorney General. Two of them involved the Ministry of Community and Social Services, and those two were settled. Of the other two reports, one dealing with the Human Rights Commission on delay and backlog has been dealt with, and the one today is a particular case dealing with Ms R.

As Ombudsman, as an officer of the assembly, I'm charged with investigating complaints the public has about government agencies. I have reviewed the complaint of Ms R in this case and assured myself that a thorough investigation was conducted. We reached certain conclusions as a result, we found the complaint valid, and we have put forward certain recommendations to put this situation right. We have had no success in gaining acceptance of the recommendations I've put forward. We have raised the case with the Premier, as I'm required to do, and I am here today seeking the committee's support for the recommendation I have made in this case.

This involves an individual we have called in the documents Ms R, who is a black woman of West Indian origin who alleged discrimination in employment because of race, colour, ancestry, place of origin and handicap. This discrimination resulted in the loss by Ms R of her job.

The Human Rights Commission, which dealt with this case from 1986 to 1990, found there was a prima facie case. They found prima facie that Ms R had been discriminated against by the employer company, by the respondent. They also found a prima facie case of systemic discrimination against non-white employees at the respondent company. This employer was a large company and had had four similar complaints of discrimination. The Human Rights Commission was able to settle

the systemic part of this case. In Ms R's case, there were protracted negotiations, there were over two and a half years spent in conciliation, and no settlement was reached at the end of the day. There were a number of offers that came forward. Ms R refused those offers, and in the final analysis the case was dismissed. Her request for a board of inquiry was denied, as was a request for reconsideration by the commission.

When she came to the Ombudsman office, her complaint was about how she was treated by the Human Rights Commission in its efforts to conciliate this case. I'll say again, there's no question that discrimination was found here. That is not an issue. What I have focused on is the treatment of Ms R following the determination of discrimination through the conciliation process. She complained about their treatment and she complained that they failed to obtain an appropriate settlement after they had established that she suffered discrimination.

Throughout the investigation, which took some considerable time, we did extensive interviews of Ms R, staff at the commission. We reviewed a great deal of documentation and the files. We were required to weigh all of the evidence and to make findings of credibility.

Ultimately, I made a number of findings of fact and I reached certain conclusions, and I'll deal with these in turn. There are three.

The first conclusion I reached after reviewing the evidence is that the actions of commission staff, at times subjecting Ms R to less than professional and courteous conduct, were oppressive, and we found a number of instances which bore this out, including:

There were scheduled meetings with commission officers where Ms R waited several hours, where an officer was not at the office, had not left word and never showed up. On other occasions she was similarly kept waiting.

She was also informed during the conciliation by the investigating officer that the respondent company requested a meeting with her. The commission officer did not confirm the meeting with Ms R; in fact did not call Ms R until one half-hour after the time of the proposed meeting. This meeting was a critical one because it's a meeting that had tremendous impact on the willingness of the respondent company to talk settlement in terms of reinstatement of Ms R to her job. In the words of the respondent company, "This incident irrevocably deteriorated the relationship between Ms R and the respondent company." The company reached the conclusion, and they were not dissuaded from reaching this conclusion by

commission staff, that there was a total absence of confidence, trust and respect, and they reached certain conclusions about Ms R's behaviour in not attending this meeting.

The final example I will raise here of unprofessional conduct by the commission involved a letter dated February 20, 1989, which was received by Ms R by Priority Post on March 20, 1989, a letter that came from commission counsel. The letter indicated that the final minutes of settlement were included and advised her that she had 15 days from February 27 to execute those minutes of settlement. The facts are that Ms R received that letter and those minutes well after the 15-day expiry date. She protested and did get an extension. The fact is, there was no clear reason why this letter was sent when it was.

Those are all examples of the conduct that have led me to the first conclusion about this government agency.

The second conclusion: I found that the commission's omission to fully consider and pursue reinstatement during conciliation of Ms R's complaint was unreasonable. From the beginning and throughout the conciliation process, the facts are that Ms R wanted her job back and she sought reinstatement. That was the central thing she sought as a resolution.

Reinstatement is a legitimate objective, especially when you've got a case where systemic discrimination has been proven. What better remedy than to put an individual back in the company that discriminated against her and which resulted in the loss of her job?

Even after Ms R was re-employed, the facts are that she sought reinstatement to her original job. Why? One of the very clear reasons was that the benefits were always superior in her first job. Even at the conclusion of reconsideration, she remained interested in reinstatement.

I found, and the facts show, that the commission's lack of effort in this regard to pursue reinstatement, a legitimate objective, was abundantly clear. None of the offers put forward over the period of conciliation involved reinstatement. The facts show that reinstatement was in fact set aside early on in the process, without proper consideration and regard as to whether this was an appropriate solution and certainly without regard as to what it was Ms R wanted in the end result.

The evidence is that even at reconsideration, the reconsideration officer himself recommended a board of inquiry because he thought reinstatement was the appropriate remedy. In fact, the reconsideration officer and the director of compliance both expected to be at the commission meeting when the case was decided, which was the practice. Both would have spoken, I believe, to reinstatement. The fact of the matter is that reinstatement was woefully neglected on the commission's part as part of the appropriate remedy in this case.

The offers that were put on the table by the respondent company ranged from \$4,000 in the beginning to almost \$75,000 in the end, and from the beginning to the end Ms R took the position that it was not money she was after, it was reinstatement. She refused the final offer of

upwards of \$75,000. Even in the end you'd say, "Well, why did she refuse that?" She refused it because she sought her job back or a board of inquiry, where she was willing to risk whatever the board would do. The board is a public process. This would have been open to public view. The board could have ordered reinstatement. I think the facts are very clear on this, and this was not pursued by the commission.

The third conclusion the investigation supports is that the commission's actions in pressuring Ms R to accept the settlement, which she considered inappropriate—it's efforts were coercive and oppressive. The efforts I will talk about are a few in number and include the following:

From the beginning, offers of \$4,000, to the end, upwards of \$75,000, Ms R was urged by commission officers of increasing levels of authority to accept the particular offer they deemed to be reasonable. Each time an offer came forward, whether it was \$4,000 or \$11,000 or \$45,000 or \$74,000, she was told, "This is a reasonable offer." She was urged to accept each of these offers. One incredible and confusing position to be put in, having people, particularly at different levels of authority—and this is not usual practice—attempting to convince her and I believe pressuring her to accept these offers as reasonable. One day \$4,000 is reasonable, the next day \$45,000 is reasonable, and the next day almost \$75,000 is reasonable.

She was also encouraged to sign a release form even though she had not agreed to the associated settlement proposal and had in fact refused the offers. I have told you about the late letter that came, which similarly included minutes of settlement and placed a deadline on her. The deadline had passed before she received the letter. This too, I believe, contributed to pressure on Ms R.

She was advised that if she did not agree to settlement of the case as proposed, it would be dismissed and she would have no opportunity for the case to go before a board of inquiry and she would then have nothing. I believe this was undue pressure and coercive: "Take the settlement or the case is dismissed. There will be no board of inquiry. There will be no remedy."

I believe that the fact that different officers presented to her as reasonable a variety of offers and minutes of settlement they knew not to be acceptable and the fact that there was no real attempt to pursue the remedy that Ms R wanted is key. Rather, she was pressured to accept a settlement that met the objectives of the respondent company. Remember, this company had already had four complaints of discrimination against it. They had settled those for \$5,000 or less. So what did they want to do with this case? They wanted to pay it off. Those were their objectives. She was pressured to accept a settlement that met the respondent's objectives, and when she resisted she found herself faced with more pressure, which I find, on the facts, amounted to coercion.

This situation undoubtedly was confusing and stressful for Ms R. It is not surprising that she became frustrated and exasperated and expressed her frustration. You will hear, I am sure, that at one point in the conciliation efforts Ms R made a statement about \$1 million. There

was an offer put forward to her of \$45,000, and when she refused it the staff person in attendance expressed frustration to her at her unwillingness to accept this offer. They were saying, "Remember, this is a reasonable offer," words to the effect of, "Well, what do you want, blood?" Ms R's reply was to the effect that "If I cannot be reinstated to my job, then let them pay me \$1 million or let a board of inquiry decide."

I have looked at this and we have spoken to commission staff, who also believe the conclusion that this statement was not a serious request for \$1 million. This was a statement made out of frustration and to emphasize the fact that she wanted her job back. I believe that any emphasis given to this statement as one seeking \$1 million really ignores the situation this individual was in. This is not the statement of a hostile, aggressive or unreasonable complainant looking for \$1 million. That is accepted and has been by senior members of the commission staff we have interviewed. Rather, this is the statement of somebody frustrated and ignored, someone who's been poorly treated by an agency mandated to protect and enforce her rights and an agency that didn't hear her. I believe the intent of the statement was to say that no amount of money would be enough to restore her dignity and to emphasize the fact that she continued to seek reinstatement.

#### 1020

This is a statement of someone caught between an oppressive employer on the one hand, who had discriminated against her, and a government agency on the other hand that was ignoring her, pressuring her and coercing her to accept a settlement that she did not want and that was not appropriate in the circumstances.

I have reached the conclusions that I've noted and I have made a recommendation, and I would say to you that the investigation that was done is a thorough one: The files that were reviewed were done so thoroughly, the interviews were conducted that should have been conducted.

The recommendation I have put forward has to take into account the fact that what we have here is an individual who had a prima facie case of discrimination and went to the agency charged with reviewing these complaints and giving some relief. This is, after all, an enforcement agency. At the end, she was left with nothing. At the end, she was deprived of any remedy: no board of inquiry, no reinstatement, nothing. I have recommended that she be provided with an apology and \$75,000 in compensation to redress the unreasonable and unprofessional handling of her case.

You may well decide that this was the last offer on the table and that Ms R is entitled to something more. You may well decide that with the passage of time, interest is in order. You may well decide that a greater sum is in order. You may wish to recommend that.

The commission's response to date on the findings on the recommendation that I've provided I'll just review for you. There are quite a number of exchanges of correspondence, I appreciate. My staff and I have dealt with four successive chief commissioners on this file at the Ontario Human Rights Commission.

In the final analysis, the commission offered to apologize. They have admitted that the staff may have misunderstood Ms R's position during conciliation and taken her statements, including, I believe, the \$1-million statement, out of context. It's that misunderstanding that led them to emphasize the monetary settlement rather than reinstatement. They have acknowledged this.

They have also advised that they've instituted a number of projects internally, key among them an antiracism project. They've acknowledged that in this case, where you've got an environment of cross-cultural, interracial dynamics, misunderstanding is always a possibility and it's critical that you have a high degree of sensitivity among the staff dealing with it. So they have agreed to do that.

They have also confirmed that the process of offering a settlement to an individual on the basis that "If you refuse it the case will be dismissed" was in fact coercive and this policy has been discontinued.

Finally, they have advised that they are seeking changes to the code to make it very clear that when they're determining whether a case should go to a board of inquiry in the future, the complainant's instructions should be given paramountcy. In this case, Ms R wanted reinstatement. Last, they have offered compensation, but only in the amount of \$5,000.

I appreciate the steps the commission has advanced to try and respond to my recommendation and settle this case. I appreciate their acknowledgement of the shortcomings. I can say with candour that it was with great difficulty that even this much was accomplished.

What troubles me is that there still does not seem to be an acknowledgement of the position of Ms R or a genuine acceptance of responsibility on the commission's part that it was due to its actions that she is without a remedy at this stage. Ms R is a victim of discrimination, going to a government agency mandated to protect and enforce her rights that has, through its own coercive and oppressive behaviour, deprived her of a remedy.

She was entitled, I believe, to expect to be treated professionally; she was not. She was entitled to expect to be treated sensitively; she was not. She was entitled to expect to be heard; she was not. She was entitled to evaluate the offers of settlement proposed to her without coercion; she was not. She was entitled to have her legitimate settlement proposal considered and advanced, and it was not, and she hung on to this till the very end. She was entitled to rely on the commission to discharge its responsibilities to protect and enforce her rights. I believe in this case this did not happen.

When all was said and done, Ms R, as I've said, wanted her job back. The commission lost sight of this. They did get a settlement on the systemic part of the complaint with the respondent company, but I believe at the expense of the person who was the subject of the complaint in the first place.

I believe that government agencies must accept the responsibility for their actions. I think it's incredible that an agency involved each and every day with enforcing and protecting human rights could have failed in its

duties in this regard and itself become coercive and oppressive in its behaviour. If a government agency is to have credibility in asking respondents or the public to compensate for such behaviour, it has an even higher duty to do so itself.

For all of these reasons, I have recommended that the commission provide Ms R with an apology and \$75,000 to compensate her to redress the unreasonable and unprofessional handling of her case. I ask this committee to support this recommendation in your report to the assembly on this case. I know you will also want to hear from the commission as to why it has not implemented the recommendation itself before you conclude your report.

I'll be happy to answer any questions you may have.

1030

Mr Frank Miclash (Kenora): A question in my mind is, was there ever any reason why the respondent refused to reinstate Ms R?

Ms Jamieson: One of the reasons given early on was that they did not want to put the individual back dealing with the same manager who had been involved in the complaint. This is a large employer. There were ample options for the employer to find employment for this individual within the organization. I think that reason was feeble, at best.

**Mr Miclash:** When we're talking about reinstatement, apparently there was a point where Ms R indicated to the commission staff that she was no longer interested in reinstatement as a possible remedy. How did that come about and when did that come about?

Ms Jamieson: I believe that is a position the commission has put forward, but I can tell you that on the facts, looking at the investigation, beginning to end, Ms R was throughout seeking reinstatement, right until the end, which is why I talked about it.

With an offer of almost \$75,000 in front of her, why would she turn that down? She turned it down because she was hoping, on reconsideration, that she would be able to have the matter go to a board of inquiry. That would have risked everything, but that board could have ordered reinstatement, and that's what she sought.

Mr Miclash: That's fine.

Ms Zanana L. Akande (St Andrew-St Patrick): You have stated that Ms R was told, and if I'm stating this wrong, please correct me, that unless she accepted a certain amount of money, or the money, the board of inquiry would be cancelled, the case would not go to a board of inquiry. Is that correct? She was left without the board of inquiry on the basis of the fact that she would not accept the money? Is that it?

Ms Jamieson: She was left without anything at that stage. It was the policy at that stage to put minutes forward and let people know that if they did not accept the settlement offered, the case would be dismissed and it would not go to a board of inquiry. In other words, that's it. That's the position she found herself in.

Ms Akande: Let me ask you, and I'll later ask the commission, because I really want to understand this clearly: What would be the more appropriate basis on

which one would decide whether or not a case should go to a board of inquiry?

Ms Jamieson: I know the commission has to balance looking for settlements in the public interest and that deal with the complainant's concern. In determining whether something goes off to the board of inquiry, they take into account whether the settlement offer is appropriate, whether there are new facts, what is the particular situation and whether it should go on to a board of inquiry or not.

I don't believe there's anything wrong with that policy itself, unless you're in a situation like this one, where there was coercion on the part of the commission itself. Then I think the commission itself is not in a position to make that determination, and this is where a board would be most appropriate. It's a public forum, and the board itself would determine what's appropriate.

Ms Akande: None of the considerations you mentioned that the commission makes—as I say, I will be asking it the same question—in deciding whether or not there should be a board of inquiry mentions the acceptance or non-acceptance of the settlement. None of the considerations you mentioned that the commission would have to make in deciding whether or not to have a board of inquiry mentions the complainant's acceptance of a settlement.

Ms Jamieson: If the complainant accepted the settlement, you wouldn't be in a position, I think, of deciding whether you'd refer something to a board of inquiry; that would be the end of it at the commission.

Ms Akande: That's right. But I asked you what should be the considerations one would think about in deciding whether or not to have a board of inquiry, and none of the considerations you mentioned included the complainant's acceptance of a settlement. Am I correct?

Ms Jamieson: Yes, but let me be clear, and I was obviously not clear. I do think the complainant's wishes, or request by way of settlement, should form part of the decision whether or not a board of inquiry should be called. In fact, I believe the commission itself has come to the conclusion that what an individual is seeking should be paramount in deciding whether a board is called and is itself seeking that very change to be made in the code. I believe, however, there was ample opportunity for them, without changes to the code, to make that determination here and it ought to have been made.

Part of what the commission takes into account when it makes its determination whether settlements are reasonable is whether the settlement proposal puts individuals back in the position they would have been in but for the discrimination.

In this case this did not happen, for reinstatement would have put her in the position she would have been in, and that was a legitimate objective, I believe. In this case, she was denied the board of inquiry because she refused to settle it in keeping with the respondent's objectives and the monetary offer that was on the table. She was left to choose between what the commission thought was reasonable or nothing at all. I think both in coming to the conclusion of what was reasonable this

agency was wrong and, secondly, in putting it to her the way they did their actions were coercive. Thirdly, in denying her any remedy at all because of their actions on those two counts, she was left with nothing.

Mrs Karen Haslam (Perth): I have a couple of questions. You said one day she was offered \$4,000 and the next day she was offered something else. I've been trying to find the time lines because I don't believe that's the case. I don't believe that one day she was offered \$4,000 and the next day she was offered \$45,000. In fact, starting in September, 1986, I understand that \$4,000 is usually done at the time—I was reading someplace—of first investigation of the case, and I just don't find when the \$45,000 was then offered, but it wouldn't have been the next day.

Ms Jamieson: No.

Interjection.

Mrs Haslam: Oh, thank you. I beg your pardon. I just found out. So in March 1988, two years later, that was the offer of \$45,000, after two years, from the respondent. It wasn't that one day she was offered one thing and the next day she was offered another.

Then, if I look farther, the final offer of \$74,000 came another three years later, in 1992. I guess I've answered my own question. I couldn't understand why you were saying one day she was offered \$4,000 and the next day she was offered \$45,000.

Ms Jamieson: Thank you, Mrs Haslam. I did not mean that literally. What I mean is that in one instance she is told that \$4,000 is reasonable, in another instance she is told that no, \$45,000 is reasonable—

Mrs Haslam: Two years later.

**Ms Jamieson:** —and in another instance she is told another figure is reasonable. It's that point I was trying to make.

**Mrs Haslam:** Okay. I just wondered about the time lines, but I see there are two years between each offer.

The other thing I wanted to look at also, in one of the bits of information I have in front of me, says that: "At a triparty meeting, Ms R took the position that if she would not be reinstated, then she would consider compensation for salary from date of dismissal to retirement age at 65. The officer understood this to mean that she would give up reinstatement if the money offered was attractive enough. It was at this point that the conciliation process began to focus on a monetary remedy as a viable proposition."

I wondered, if that was one side of the case, why you didn't agree with that, why you felt that she still wanted reinstatement even after four years, even going to the reinstatement argument?

1040

Ms Jamieson: Because the facts are that Ms R over and over and over again returned to reinstatement, and the commission itself has acknowledged that it may well have misunderstood her representations and has acknowledged that it focused unduly on monetary compensation as opposed to reinstatement and it ought not to have.

Mrs Haslam: That brings me to the other point that

I found interesting. The reconsideration officer was aware that further conciliation talks focused upon reinstatement were a futile exercise. As you will notice, his recommendation was not for further conciliation but to recommend a board of inquiry since no monetary remedy, no matter how overwhelming, would be adequate in Ms R's view.

I wonder if you ever got the feeling, and I read it someplace else and forgot to note it, that what this person really wanted was a day in court, a time to say, "This company has done me wrong and here is what has been said." Did you get that feeling from the person? So it doesn't matter what the offer was; what she wanted was her day in court or blood or whatever it was.

**Ms Jamieson:** I can tell you that I have been concerned by the attempts to portray this individual as unreasonable, hostile—

Mrs Haslam: No, I don't get that from this.

**Ms Jamieson:** —never being satisfied, there never being an amount of money that would be satisfactory. In that sense, unreasonable? No.

We interviewed this individual, made findings of credibility, determined the credibility of this individual. I believe that she was always interested and would have been satisfied. Her original request, you may know, included reinstatement and, I believe, some \$15,000 in damages.

Mrs Haslam: Right.

**Ms Jamieson:** It was quite, in relative terms, a modest request. I believe it to be reasonable under the circumstances and I believe settlement could have been achieved on that basis.

Mrs Haslam: In light of the time from 1986 to 1992, when the reconsideration was taking place, that's a long time, and in light of all the bad relations that had gone on between the company and the person, do you feel that reinstatement was still a reasonable demand at the time of the reconsideration?

**Ms Jamieson:** This is a large company. This is a large organization. Ms R could well have found employment in this organization that would not have put her in the same area, wing, whatever. I believe they could have accommodated that.

I also know that when you're dealing with cases of systemic discrimination, one of the most effective remedies that is recognized to be available is to place an individual back in the company that discriminated against them. Particularly if you've got an employer like this one who has visited discrimination on four other cases, you know it and you know they've settled for money each time. They're obviously not learning a whole lot, and some other extraordinary step seems to be in order. I think it was perfectly legitimate and reasonable and could well have been accommodated.

It simply was not pursued, and the fact that the respondent company resisted at the outset was accepted. The door was closed and was not pursued. I also think that it had to do with the fact that the commission focused a great deal of its efforts on the systemic remedy and lost sight of an appropriate solution for Ms R, as a result.

**Mrs Haslam:** Do you think there are any time lines for reinstatement? This was six years.

Ms Jamieson: Yes. I'm not recommending reinstatement at this stage.

**Mrs Haslam:** So you think there is a time line to reinstatement in a company?

Ms Jamieson: It's very hard to say. It would be year one, year seven. I think you have to look at it in the circumstances, what is possible. I think timely resolution of complaints is critical, which is why I would have hoped this agency would have seen that reinstatement was something that could and should have been pursued, rather than spending two and a half years conciliating on increasing amounts of money.

Mrs Haslam: Because they were of the opinion that reinstatement was no longer viable or was no longer requested?

Ms Jamieson: They chose not to pursue it. I believe that was a poor judgement call.

Mrs Haslam: You believe they chose not to pursue it, versus they felt that Ms R was no longer interested?

Ms Jamieson: The facts are that Ms R was interested, beginning till end. I find it very difficult to accept—in fact the commission itself now says it may well have misunderstood. If they had heard her, if she had been heard by the officer involved, she repeatedly requested reinstatement. This was not a one-off; this was over time and repeated. This was not pursued and I believe it should have been. We didn't go back and relive what happened. We went back and investigated and looked at the evidence, and the fact is that this was not pursued.

Mr Gary Wilson (Kingston and The Islands): Thanks very much, Ms Jamieson, for your presentation. I also would like to look at the question of reinstatement, because of course it affects the compensation as well. I was wondering whether you know the reason for the respondent not considering reinstatement. Did you ever see anything to that effect?

Ms Jamieson: I think that was along the lines of Mr Miclash's question, Mr Wilson, and one of the reasons that was given is that the company was not interested in putting Ms R back in the situation with the same manager who had been part of the difficulty or discrimination in the first place. I think that was a feeble excuse and should have been pursued. The fact that the respondent company resisted it is not a good enough reason for the commission to have discontinued pursuing it as part of the settlement. This is, after all, an enforcement agency we have here.

**Mr Gary Wilson:** To be clear, is it back in the original position or a comparable one in the company?

Ms Jamieson: I believe it was the original position.

Mr Gary Wilson: That's what Ms R wanted or the company was willing—

**Ms Jamieson:** I believe Ms R would have accepted a position elsewhere. And I believe the company could well have accommodated that, if it were pursued.

Mr Gary Wilson: Okay. In some of the documentation we have in the commission's response to your

investigation, it's suggested that on May 5, 1987, at a triparty meeting, Ms R took the position that "if she would not be reinstated, then she would consider compensation of her salary from date of dismissal to retirement at age 65." Actually, "if she would not be reinstated" is underlined, which suggests, I think, that this is a break in Ms R's position, that reinstatement was what she wanted, plus the compensation because of the problems that arose.

Do you see that as significant, or what significance do you place on that assessment?

Ms Jamieson: What I've said, Mr Wilson, is that from the beginning to the end, looking at every meeting, looking at all the notes to file, having all the interviews, both with Ms R and the individual staff members involved, it is clear that she sought reinstatement from beginning to end, and any monetary settlement was not what she sought, nor did she find it attractive. I believe there was at least one statement, the \$1-million statement made out of frustration, but at no time was she seeking a monetary settlement in earnest. Otherwise, why would she turn the \$75,000 down at the end?

Mr Gary Wilson: Yes. Because apparently by that time, that is, that May 5, 1987, meeting, she was working at another job that was actually paying more money, according to this document.

1050

Ms Jamieson: I believe also that you need to keep in mind that even though she got another job, for which an individual in this position is to be commended, there were not near the benefits.

I also believe that at this stage, we have certainly an acknowledgement from the commission on record that it ought not to have focused on the monetary compensation; that it ought to have focused on reinstatement, and it didn't.

I know there have been exchanged over the years a fact here and a fact there, but I can tell you that that's the point we're at at this stage. The findings have been made and the commission itself has acknowledged this. So I'm not sure it's helpful for the commission to go back a couple of years and have this discussion all over again. I would hope we're beyond that.

Mr Gary Wilson: All right. Do you know how much that would amount to, "...would consider compensation for salary from date of dismissal to retirement age at 65 years"? Do you have any idea what that would amount to?

Ms Jamieson: No.

Mr Gary Wilson: Do you know anything about her work record? I think she was employed there for 10 years.

**Ms Jamieson:** That would not be a relevant part of our investigation.

Mr Gary Wilson: I just wondered whether you did look at that.

Ms Jamieson: We were looking at the commission's treatment of this individual. We were not looking at treatment or experience with the respondent company.

This was a prima facie case of discrimination, no question about that, so that would not be seen as relevant. We were looking purely at how the commission handled her complaint.

**Mr Gary Wilson:** Okay. I'd just like to ask you about the absence of the reconsideration officer and the director of compliance at the hearing to see whether a board of inquiry would be set up. Why do you think that affected the decision?

**Ms Jamieson:** Pardon me? What's the question?

Mr Gary Wilson: You make a point of saying that the two officers weren't in attendance at the meeting to decide about a board of inquiry. Why do you think the absence of these two officers affected Ms R's case?

Ms Jamieson: I found in the investigation only that it justified her conclusion in her own mind that she was not being dealt with fairly when these two individuals normally would have been in attendance at the board meetings, fully expected to be there, were in particular supportive of reinstatement and somehow did not attend the meeting. I don't think it's too much of a leap for her then to feel that, "Boy, I'm really not being dealt with fairly here, am I?"

I don't know why they were excluded. I found it unusual. I don't impute motive, but I can tell you that as a result I found her perception of bias was strengthened because of that.

Mr Gary Wilson: Even when that reconsideration was under discussion, with the amount of time that had elapsed since Ms R had been dismissed at that point of the meeting for reconsideration, do you think reinstatement was still a reasonable step at that point?

Ms Jamieson: Not only do I think that, the reconsideration officers themselves thought that and put that forward. They thought money was not the appropriate remedy in this case; reinstatement was and should be explored. I go back and remind you that the commission itself has accepted that undue emphasis was placed on monetary compensation and not enough on reinstatement and it ought to have. So I think that's a given at this stage.

Mr Tony Martin (Sault Ste Marie): I wanted to ask a couple of questions on the question of reinstatement and how vigorously that was pursued.

In a case where it is found that there was conduct that was discriminatory in nature, is reinstatement normally the route that's taken? Is there a precedent here? Are there many precedents here?

Ms Jamieson: I think, Mr Martin, you'll find that in cases of systemic discrimination in particular, and certainly in recent years, it's considered a key remedy that should be considered.

**Mr Martin:** From your experience, normally, in situations of systemic discrimination, that's what in fact is recommended and that's what happens?

Ms Jamieson: I believe it does happen and I believe it was certainly what this individual was seeking. Moreover, I think that's the more important point, that she was seeking that.

If you have a look at a couple of letters in the briefing books, both dated March 25, from the then chief commissioner, one to Ms R, one to myself, you will see an acknowledgement, and I'll just quote from it: "We consider that our staff may have misunderstood your position"—speaking to Ms R—"during conciliation, which led to undue emphasis by them on the monetary remedies you discussed rather than on reinstatement." There is also reference to that in the letter to me of the same date. "We admit the possibility that our staff may have misconstrued Ms R's position and inadvertently taken her statements out of context in terms of the monetary."

I believe the commission has certainly acknowledged those things: that it should have pursued reinstatement and it didn't; that it placed too much emphasis on monetary compensation and should not have; and that its policies were oppressive—"constrictive" is the word it uses in its documents. They have removed that policy today. I believe they've acknowledged all of those things. I think what we're down to at this stage is, what then is the compensation that should flow as the result of this acknowledgement?

The Chair: Thank you, Ms Jamieson. You may proceed now. Do you want to add anything?

Ms Jamieson: Only to say that I don't know if the committee will have further questions of me after they've heard from the commission. I'm certainly happy to be available. It's often that additional issues are raised. The committee may wish to hear from me once again. I am happy to make myself available to speak further to any subjects that would assist you or to have an opportunity to clarify anything further. Indeed, I would ask for that opportunity.

The final thing I would like to say is to acknowledge, in the five cases we've been dealing with here, the professionalism and the hard work of each and every member of my staff who has worked on these cases; indeed, in their everyday work. They're highly trained, they're professionals and they do terrific, quality investigations, but I'd just like to record my appreciation for their work on these files in particular.

I will make myself available to the committee. Are you wanting to hear from the commission, then ask questions? Are you wanting to conclude this consideration this morning or is it possible it'll go on till next week?

The Chair: We'll try to conclude this morning. It depends how long it's going to take to go through the presentation of the Human Rights Commission and the questions.

Ms Jamieson: I'll make myself available then.

The Chair: Please, yes, this would be helpful.

**Ms Jamieson:** So I can be called back any time this morning?

The Chair: Yes.

Ms Jamieson: Thank you.

The Chair: Thank you. Ms Brown.

1100

#### ONTARIO HUMAN RIGHTS COMMISSION

Ms Rosemary Brown: Good morning. The commission really welcomes the opportunity to appear before the standing committee and to clarify its role, its procedures and the decisions at which it arrived in this case.

Before going to my written notes as to the process of the case, I think I would like to ask us to do two things. One is to place in context the fact that the Ontario Human Rights Commission does not operate as an individual organization on its own. Its entire conduct is mandated through the code, the oldest code in this country and certainly one of the best, and all decisions and all procedures are guided by that code.

In addition, there is a difference between the responsibilities of the staff of the Human Rights Commission and the commissioners. The staff of the Human Rights Commission investigate and they recommend, but the final decisions about the disposal of matters before the commission are made by the commissioners.

Usually, this is an appointed group of nine individuals from various walks of life who are considered to be responsible in terms of their consideration, impartial, unbiased and neutral at all times, with one goal and one goal only, and that is to defend the rights of the protected groups outlined in the code and to ensure that there is no violation of the rights of any of the citizens of this province.

Bearing in mind those two things, I want to tell you how the commission conducted itself in this matter and to again reassure you that at no time did the commission make any decisions or involve itself in any conduct based on its own private ideas and desires, but it was guided by the code.

Now on June 23, 1986, Ms R registered a human rights complaint against her previous employer and three of its officials. She alleged that she had been harassed on the job and that eventually her employment had been terminated, allegedly because of an injury to her right thumb and because of her race and her colour.

The commission then conducted an investigation of this complaint and what the worker found was that Ms R had suffered a cut to her right thumb while at home, that when she returned to work three days later she was unable to perform her job as a keyboard operator because of this injury and was then assigned to another position. She then submitted medical certificates indicating that she would be unable to perform her duties for three to four weeks.

The investigation also found that because she had expressed a desire to further develop her career, there was an agreement that she would be transferred to the human resources department, where she would obtain assistance in career development. At this point, her original position was then posted as vacant and it was filled by someone else. Ms R then applied for various other positions within the company but she was unsuccessful.

As a result of this, the commission's investigation appeared to support the complainant's allegations that her employer's overall hiring and promotion policies had an

adverse impact on racial minorities such as herself. That was the conclusion of the investigation.

During the course of its investigation the commission, pursuant to its mandatory, statutory duty, made attempts to obtain both corporate respondent as well as individual remedy for Ms R and, at the same time, a systemic remedy for what the commission saw as systemic issues around employment equity and training. The investigator was trying to do two things at the same time: Get a remedy for Ms R and, at the same time, look at the way in which that particular company conducted its business. He found that it was indeed not conducting its business in a way which was not hurtful to racial minorities and wanted to negotiate a remedy which was systemic as well as individual.

As a result of this, the parties eventually reached a settlement position, and the key word here is "position." On April 28, 1988, the corporate respondent—and this was after all of the settlement negotiations between the two, which started at \$4,000 and then finally arrived at the figure, on April 28, of \$74,178.55.

This was broken down as follows: It represented 23 months of lost income plus interest; it represented \$10,000 in general damages, because that is the maximum amount which is provided for under the Human Rights Code; it included consideration for future income loss; it included consideration for forfeited pension contributions by Ms R; it included lost pension entitlement and lost future pension contributions on her behalf. That was the individual remedy.

The systemic remedy was that the company was willing to put into place some employment equity measures of staff training on equity issues, as well as a number of unmentioned systemic remedies.

This package was presented to Ms R, not in a coercive manner, but presented to Ms R. It was detailed exactly how the figure, the really strange and bizarre figure, of \$74,178.55 was arrived at. Ms R refused the offer and requested compensation in the amount of \$1 million, either that or the demand that her case proceed to a board of inquiry for adjudication.

At this point, the commissioners of the commission are mandated under the act to make a decision—not the staff but the commissioners, because the code provides that once a settlement is offered and is rejected, the commission then has to make a decision as to whether a complaint should be forwarded to a board of inquiry for adjudication.

The code goes on to instruct the commission as to the tests which it must use in coming to this conclusion. Subsection 36(1) of the code make it absolutely clear that two criteria have to be met: The evidence before the commissioners has to warrant the appointment of a board of inquiry and the procedure has to be appropriate. The staff do not make a decision on this. The appointed commissioners have to weigh those two issues and make a decision.

In the case of Ms R, the commissioners decided that there was sufficient evidence to warrant referring her case to a board of inquiry. However, they decided that in light of the settlement offer which was made, both individually and systemic, in the individual instance an offer which was in excess of what would have been awarded by a board of inquiry, the procedure of sending it to a board of inquiry was not appropriate. So it split.

#### 1110

There was never any question as to whether the evidence was sufficient or not. The decision was, though, that because the respondent had met the systemic requirements of the settlement as well as offered as individual remedy in excess of what under the code the board could have offered in terms of general damages and payment for wages lost, it would have been most inappropriate for the commissioners to refer this matter to a board. That would have been an abuse of their power.

On February 8, 1989, the commission therefore advised Ms R in writing of the decision of the commissioners, not of the staff. She was allowed, as mandated by the code, 15 days with which to request reconsideration. As the Ombudsman stated, an extension to this 15 days was granted to Ms R when it was requested.

In that same letter, Ms R was advised by the commission that whether she applied for reconsideration or not, the decision had been made not to refer her complaint to a board of inquiry. As the Ombudsman has stated, that procedure in which both of these pieces of information are included in the same letter has been changed; that is no longer the case.

Ms R, upon consideration, chose not to accept the settlement offer. As was her right, she requested reconsideration of the commission's decision, and this was granted. There was a thorough analysis, re-evaluation, rewalking through of the procedure and the process of this case. Both Ms R and the corporate respondent were also provided with an opportunity to make submissions upon the upcoming reconsideration decision.

On January 10, 1990, the commission, after due deliberation, upheld its initial decision not to request the appointment of a board of inquiry.

The Ombudsman has told you that it's common practice to have the reconsideration officer present at the board meetings at which reconsideration is discussed and, in this instance, this was not the case. There is no common practice. As a matter of fact, since I've been chief commissioner, the reconsideration officer has only been present at one of our board meetings, because the important decision that the members of the commission have to make is whether there is new evidence for them to reconsider. That discussion is made by the commissioners, not by the staff.

In her report, the Ombudsman reached three conclusions. The first was that the actions of the commission staff were at times less than professional and courteous. The second was that the commission failed to adequately pursue reinstatement of Ms R during its conciliation and settlement attempts. The third was that the commission attempted to coerce Ms R into accepting the \$74,178.55 settlement and that such actions were oppressive towards her. The report then goes on to recommend that the commission should compensate Ms R by paying her

\$74,178.55, the same sum of money she rejected when it was offered in 1988.

The commission has tabled its synopsis of the case through the committee's counsel, and you have it. I would refer you to the commission's detailed position on the Ombudsman's three conclusions, to be found on pages 4 and following of that synopsis.

Briefly, the commission's position on the first conclusion of unprofessional conduct is that the Ombudsman's report itself concludes that of the six allegations on this issue, four were unfounded. As to the other two allegations, the commission moved swiftly to address them and already has undertaken significant staff training in the area of customer service and heightened sensitivity, including the development of race case guidelines for use by all of its staff. So the complaints have been addressed. The criticism has been addressed.

The Ombudsman's second conclusion, and the one which is more troublesome, deals with the issue of reinstatement. Although the respondents made it clear early on in the settlement negotiations that they did not wish to consider reinstatement, the commission's human rights officers nevertheless negotiated this issue. It was on the table. It was negotiated. However, when the final offer was made to Ms R, it was Ms R herself who indicated to the commission staff that she had obtained other employment and was not interested, and I quote, "in ever returning" to her original employer.

Now, it is not the business of commission staff to interpret the complainant's wishes. When Ms R said she had obtained other employment and that she was not interested in ever returning to her original employer, the human rights officer involved with her case and everyone else treated that statement with respect. That was her wish and that was respected. Ms R made it clear that she was seeking either monetary damages or the appointment of a board of inquiry.

The issue of reinstatement was also taken up, as you heard, by the reconsideration officer. So this issue of reinstatement was not abandoned, and I think it is truly unfair to say that the commission did not pursue this matter. The reconsideration officer, however, realized that it was not going to be possible to successfully negotiate this matter with the respondent, and that was the basis of the reconsideration officer's recommendation for the appointment of a board of inquiry.

However, as I stated before, upon deliberation, the commissioners decided that although there was a prima facie case, because the remedy offered was appropriate or in excess of that which would be achieved before a board of inquiry, it would uphold its original decision not to refer this matter to a board of inquiry.

#### 1120

The third conclusion of the Ombudsman involves the allegation of coercion. This is an extremely serious, destructive and damaging accusation of the commission, and at no time has the commission ever admitted to involving itself in coercion. In its offer of \$5,000 to Ms R, in its letter, it said if there was a perception on her part that there was a matter of coercion, then the commis-

sion was willing to make this offer.

The commission cannot coerce. It does not have that mandate in the code. It would be unethical. It would be so unacceptable in its behaviour that none of the previous chief commissioners, honourable people all of them, would have tolerated it. I have had the opportunity of meeting both Catherine Frazee and Alok Mukherjee, and I cannot in my wildest dreams imagine either of them tolerating coercion on the part of a human rights officer.

When I asked for an explanation of that accusation of coercion, I was reassured again and again that Ms R was walked through the process of what the \$74,178.55 meant. It was broken down and explained to her.

That was not coercion. That was a responsibility of the code, as set out in section 33, to try to effect a settlement. We have no option. The code gives us that mandate. We must do it. When we failed to do that in another case, the case was destroyed; the board refused to deal with it. We have to do that.

This was a complicated settlement and it was spelled out in all of its six or seven parts, but at no time was any attempt made to coerce her into accepting this against her will. It was simply stated that this was a settlement in excess of what she would receive before a board of inquiry, because the board of inquiry also has guidelines which it has to follow.

Despite this, Ms R remained steadfast in her rejection of what was very clearly stated by the respondents as their final offer of \$74,178.55, and even after receiving the notice of the commission's final decision for disposal of this case, namely that it would not be referring it to a board of inquiry, Ms R continued to reject that offer.

Now, for these reasons which I have stated in response to the three criticisms raised in the Ombudsman's report, the commission does not consider that the recommendation by the Ombudsman of payment to Ms R is merited.

In summary, therefore, the commission is before you today to reaffirm its position that there was no procedural or substantive error in the commission's process or decisions. Accordingly, the commission cannot use public funds to pay Ms R \$74,178.55, which is the recommendation of the Ombudsman, that the commission do so.

The commission is satisfied that all the necessary elements of natural justice were afforded to Ms R throughout the process of investigation, conciliation and decision-making at the commission. The commission has indicated to the Ombudsman on several occasions that it is, however, more than willing to apologize to Ms R for any perception of unfairness which she believes she received at the hands of the commission.

As I stated earlier, the commission has moved to make systemic changes in terms of retraining of staff around the matters of customer service and other issues raised by Ms R in terms of courtesy and respect in the way in which she was treated. As well, I would like to add that not only have we involved, embarked on, a process of training initiatives that have to do with customer service, but that we're also addressing, and have addressed, the issues of sensitivity which were raised by the Ombudsman's report.

It is with the greatest respect, therefore, that the commission declines to accept the Ombudsman's recommendation that it make payment to Ms R in the amount of \$74.178.55.

Accompanying me this morning is the senior counsel for the commission, who also was the counsel dealing with Ms R's case, and the executive director of the Human Rights Commission. Mr Chair, I would ask your permission for them to join me at the table to deal with any questions pertaining to this case which may be raised by members of the committee.

**The Chair:** Yes, you're welcome. First question: the opposition side.

Mr Miclash: You indicated that the commission cannot use public funds for the \$74,178.55, but in our notes it's indicated that you're willing to authorize payment to her of up to \$5,000. Does that still hold true, that there's going to be a letter of apology plus an authorized payment of up to \$5,000?

Ms Rosemary Brown: If that recommendation were to come from this committee, I would have to take it back to the commissioners. I cannot make a unilateral decision on my own. These decisions are made by the full commission, and at the next commission meeting I would have to present this recommendation to the commissioners.

Mr Miclash: In terms of the use of public funds, when you say you cannot use public funds for the \$74,000 yet you're allowed to make a decision of the use of public funds up to \$5,000, what is the difference here? I'm a little confused there.

Ms Rosemary Brown: The difference is close to \$70,000. But aside from that, the sum of \$5,000 was one which was arrived at after due consideration on the part of our senior counsel and the commissioners that the perception that she was not treated with courtesy and felt hurt by that was something which could be addressed in this manner, but certainly not \$74,178.55.

**Mr Miclash:** When you say she was not treated with courtesy, you indicated something about staff training. Can you elaborate a little more on what you were talking about in terms of staff training?

Ms Rosemary Brown: Yes. The executive director is with me and I'm sure would be very happy to give you details of that.

Mr D. Scott Campbell: First of all, in terms of the training initiatives, we have to look at them in the context of what we're doing as an organization as a whole. They are just one of eight organizational improvement initiatives, organizational change initiatives, that we've talked about. In fact, we talked about it at the last hearing of this committee.

What we have done in terms of customer service is that we have developed a document called Commitment to Service. It actually is on all of the walls of every single office in the commission. As you know, there are 15 regional offices throughout the province. We have also trained all our staff on that Commitment to Service. By that I mean, what do we mean by courteous service, what do we mean by respectful service etc?

Going one step further in terms of the training of our officers, we have had now two sessions, one last June—it actually started June 28—and one in December of last year. They dealt with investigative techniques and with the issues of due process and administrative fairness. I think both of those speak to the issue you're raising.

Ms Akande: Thanks for the presentation, and good morning. I have a few questions and, really, sort of an aside but not aside.

I'm really interested in your initiation of Commitment to Service. You mentioned that it deals with customer service, and I believe you mentioned that it also includes some view of anti-racism or some attention to anti-racism. I have to say, respectfully but clearly, that it seems passing strange to me that the Human Rights Commission would have to go through such a process before it recognized that it, of all offices, should have a commitment to making sure that its staff would be aware of and therefore responsive to the differences in races and the differences in groups and have a commitment to customer service. It would be my hope that the quality would go in before the label of human rights would go on. But I mention that just in passing.

I do have some questions and I'm very appreciative of the fact that you have separated the staff from the commissioners. That makes it extremely clear. It would be the staff, I believe, that would be working with Ms R about issues of the settlement that was offered: the \$5,000, and then the \$45,000 in March 1988, and then the \$74,000. It would be the staff that would be making that. What explanation did the staff have or did the staff give or are you aware of that would account for the increase in settlement from \$4,000 to, two years later, \$45,000, to \$74,178? I think I have the numbers right.

Mr Mark Frawley: Perhaps I can answer that for you. The initial amount of \$4,000 was arrived at, I understand, at a very early stage, before any investigation whatsoever had been done. It was an offer that was a preliminary offer. As time progressed, clearly the respondent recognized that the damages would increase by the very fact that Ms R would have been out of work, so that amount alone would have increased. As well, other matters kept being put on the table, so the settlement grew until the final amount of some \$75,000, which, as you heard, included a series of different items, both individual and systemic.

Ms Akande: So the respondent, even before the issue was taken very far, implied an admission of guilt by making the offer of \$4,000.

Mr Frawley: I think that would be a wrong implication to put. All settlement offers are without prejudice. It would be approximately 50% of all cases at the Human Rights Commission that are settled, and all of them are settled on a "without prejudice" basis. At no time in the settlements do respondents ever admit to guilt. It is simply a matter of attempting to resolve an issue, and it is not unusual for an initial offer to be made on that basis.

Ms Akande: So if the offer were made without any

admission of guilt or implication of such and that would be explained by the staff to Ms R, it would clarify, at least in my mind, why someone might want to continue with the board of inquiry and with reinstatement.

Mr Frawley: You're assuming, with respect, that reinstatement continued to be an issue, and I can come back to that if you wish. As the chief commissioner has said, it was made clear to commission staff that at one point Ms R changed her position and that reinstatement was replaced by monetary requests. The only thing a board of inquiry could do, assuming that reinstatement was not on the table, would be to award an amount of money, and when the \$75,000 amount is analysed, it is clearly in excess of what a board would have awarded.

I pick two items only:

First, the amount for lost wages was in the amount of settlement of 23 months, and in fact she was only out of work for 15 months. So a board would never award more than 15 months; 15 months would be a maximum, or it might be less, depending on mitigation, had she fully mitigated, and if not, that might be reduced. It would never be in excess of the actual period of time that she was out of work.

The second item I choose as an example is the general damages, \$10,000. The code provides for a maximum of \$10,000, but in fact that has never been awarded by a board. That was an amount in excess of what could reasonably be expected that a board would ever award. Typically, general damage amounts are in the \$2,000, \$3,000, \$4,000 range.

Ms Akande: When you explain this, you make very clear that it's the commission that makes the actual final decision about whether it should go to a board of inquiry, and Ms Brown has given us the basis of that decision made by the commission. We're actually reducing this case, at least in my mind, to whether or not there was coercion, to whether or not the staff was coercive in its communication with Ms R about whether the board of inquiry would hinge on or be related in any way to her acceptance of the sum of money.

Mr Frawley: In fact, the staff made it clear, as it always does, that it is the commissioners who make the final decision and not the staff. But even though the commission has denied in the strongest possible terms that there was any coercion, as the chief commissioner herself has told you, putting that aside for the moment, in the complainant's own mind, to her knowledge, when she received that letter in February, she knew at that point that the decision had been made by the commissioners not to appoint a board and she was then given an extra period of time, 15 days, which was then extended to 30, to accept the settlement.

It wasn't as if she was willing to take a roll of the dice, as it were, hoping that she'd go to a board. She knew that the decision had been made, not might be made, had been made by the commissioners not to appoint a board. Therefore the only decision for her was, "Am I going to accept this \$75,000 or not?" and as she decided, she chose not to accept it.

**Ms Akande:** What is the reason for the commission's

decision to separate those two pieces of information that were contained in the one letter? I can't find my copy of that letter; I don't know if it's here or not. Ms Brown had referred to that, that there was some decision.

Ms Rosemary Brown: What we're dealing with here is perception. The commissioners felt that if there is a practice in which we're involved which leaves a perception of coercion in the mind of a complainant or a respondent, we need to find a better way of doing it. We were responding to perception.

Ms Akande: I appreciate your answers.

Mrs Haslam: I have very basic questions this time. Did the commission conclude that reinstatement was not a realistic option? If so, what reasons were given to Ms R about why reinstatement was not being pursued?

Mr Frawley: The commission knew that Ms R had already decided that reinstatement was not something she wanted. She had told the then director of compliance and senior counsel in a meeting that reinstatement was not what she was looking for. This was a reaffirmation of what she had already told the regional staff. But when she met with those two individuals at head office and the final \$75,000 offer was reviewed in detail with her, she again reaffirmed that she had obtained another position and that reinstatement was not something she was seeking.

1140

Mrs Haslam: Was Ms R's desire for reinstatement presented to the commission as a reason why she rejected the respondent's offer?

Mr Frawley: At the original decision or at the reconsideration decision?

Mrs Haslam: No, at the original decision.

Mr Frawley: At the original decision, what was before the commissioners was, as is always the case, the case analysis written by the officer setting out the investigative findings, and in this case all the conciliation efforts. That was the same document she had received, as had the respondent, and had been given an opportunity to reply to.

**Mrs Haslam:** So you don't look at a reason why someone chooses not to accept a settlement at a commission level?

Ms Rosemary Brown: The commissioners do.

Mrs Haslam: At the reconsideration?

Ms Rosemary Brown: Yes, the commissioners do.

**Mrs Haslam:** So at the reconsideration, were they informed why she had refused the original settlement?

Ms Rosemary Brown: The reconsideration was quite clear that by that time Ms R had another job. She had stated she would not "ever," in quotes, return to her original employment and she was seeking either monetary compensation or to have her case referred to a board of inquiry. Those were the only two things she wanted.

Mr Frawley: In fact, even at the original decision, she had by then obtained other employment. By the time of the original decision, she had already been employed by another employer.

Mrs Haslam: We talked about the absence of recon-

sideration officers during the reconsideration meeting. Do you feel that had any bearing on the commission's decision?

Ms Rosemary Brown: No. In fact, reconsideration happens at the same time as the commission is dealing with other cases, with other complaints. It happens at a regular commission meeting. It is not a special session that is set up to deal with reconsideration.

In terms of dealing with other cases, the officers involved are not present either. What we deal with are the facts that are before us, and we weigh those within the context of the code and the directions we have as a result of the mandate outlined in the code.

Mrs Haslam: The commission has put forward a settlement or option of settlement of \$5,000. Is the commission still standing by that offer?

Ms Rosemary Brown: When that question was posed to me earlier, I said I would be willing to take that back to the next commission meeting and have the commissioners respond. I cannot make a unilateral decision.

Mrs Haslam: I apologize. I was obviously out of the room for a few minutes when that question was asked.

You talked about the perception. Would you tell me again what steps you've taken to address those concerns of the perception of coercion, of the perception of the way your staff handle people?

Ms Rosemary Brown: I'm going to ask the executive director to do that, because it's part of the whole reorganization that the commission is going through.

Mr Campbell: I'd be glad to answer that. We've done a number of things, again in the context of the organizational change initiatives in the commission. If you look at the eight organizational change initiatives, training is our number one priority. We recognize that the way to change the way we do business is to make sure that the staff in the commission—and that's all the staff, not just the human rights officers; it's support staff, managers etc—have the necessary knowledge, skills and abilities to perform their duties.

We have started with basic investigative techniques. The cornerstone of basic investigative techniques is the notion of due process, of administrative fairness. We've also dealt with issues such as customer service, and I said on the record earlier that we have developed a commitment to service and we've trained people relative to that. So those are two examples. I can give you more, but those are two.

Mrs Haslam: I'm interested in this case. Are there any other steps the commission could take to redress Ms R's perception of having suffered in this instance?

Ms Rosemary Brown: The commission is convinced, after really going through this case when the Ombudsman's interim report came out and again when the Ombudsman's final report came out and again in preparing for this, that there is no basis for her perception that coercion occurred, that in fact what she did get was very detailed explanations as to the reality of the situation, which was that because the settlement offer was in excess of what the commission thought she would receive from a board, the commissioners decided they would not

proceed with this. This was not a staff decision. This was a decision made by the commissioners after due deliberation on this.

We can apologize for this. We can tell Ms R this a million times, but we may never, ever be able to change her perception that she was coerced. But when she asked for an extension of the 15 days to reconsider this, she was given 30 days. Now, if you're coercing a person, you don't give them extra time. I think the commission has done everything in its dealings with Ms R to be fair and to honour its mandate under the code.

Mr Gary Wilson: Thanks very much for your presentation, Ms Brown. I'd like to look at this reinstatement, since it certainly seems to play a large part in Ms R's concern about how she was treated, at least in my mind it does. I was wondering what began at the beginning or what steps were taken to see whether the company was interested at all in the reinstatement proposal.

Mr Frawley: The materials the Ombudsman reviewed would have been, as is always the case, the full investigative file. The commission doesn't hold back any documents, and never would, so the Ombudsman would have seen that there was a process the officer went through in which various options were explored.

Clearly, the option of reinstatement, which the complainant had indicated at the beginning was what she wanted, because of course at the beginning she was still without employment, was put to the respondent, but at a certain point in time, when Ms R advised that if reinstatement were not possible then she wanted money, at that point it shifted to how much and how would it be calculated.

The reinstatement is something which clearly the officer attempted to negotiate, but when faced with on the one hand a respondent who was reluctant to offer that and on the other a complainant who at a certain point said, "Then I want to switch over to a certain monetary amount," let alone at the point after which the complainant had obtained other employment, then I think reinstatement is very much a lower item on the scale. That obviously is not what you heard from the Ombudsman, but that is what the commission believed at the time from the complainant herself.

Mr Gary Wilson: I believe we also heard from the Ombudsman that the \$1 million figure represented frustration, that it wasn't a real figure. What do you think of the \$1 million amount?

Ms Rosemary Brown: Part of the training the staff get is, as I said, to be respectful of the instructions they receive from complainants. It was not the responsibility of the staff person to say that Ms R's request was irresponsible or that it was unreasonable or to make any other judgement of it. The responsibility of the officer was to continue using that figure in negotiations with the respondent. They do not have the luxury of assuming that that was the result of frustration.

#### 1150

Mr Gary Wilson: But the term "frustration" adds some colour to what must be the negotiations that go on between the officer and the complainant, so I would think

that would be part of the process.

Ms Rosemary Brown: Frustration should not be part of what goes on between the officer and the complainant. The officer's responsibility is to negotiate with the respondent. In the process of negotiating with the respondent, one or either of them may become frustrated, but the officer should not become frustrated with the complainant.

Mr Gary Wilson: I'm not suggesting the officer would, but the complainant might, I would think, if it's not turning out in the way they would hope it might. I was just wondering whether an assessment was made about the \$1 million figure, for example.

Ms Rosemary Brown: The assessment that was made—and this assessment was made by the commissioners, not by the staff—was that the final offer of \$74,178.55 was a reasonable offer. You see, under the code, we have the responsibility to make those kinds of decisions. At some time, the commissioners can decide, "This is a reasonable offer and we will not proceed any further."

One of the things the Ombudsman said is that if a complainant says, "I want to go to board," that should be what happens. If that were the case, then there would not be a commission. I mean, that's what you can do with the courts: You can say, "I want to go to court on this," you can hire your lawyer and you can go to court. But there is this other body in between the complainant and the board of adjudication, as there is between the respondent and the board of adjudication. It is these commissioners who have the responsibility to make some responsible decisions around this, and one of the responsible decisions the commissioners made was that the offer of \$74,178.55 was reasonable.

**Mr Gary Wilson:** Could you give us some idea about how successful a reinstatement is in complaints like this? Have you any assessment of that?

Mr Frawley: I can advise you that in the 33 years or so that the Human Rights Commission has been in existence, to my knowledge there has only been one board of inquiry that has ordered reinstatement.

Ms Rosemary Brown: But there have been a number of instances when it's been negotiated without going before—

Mr Gary Wilson: That's what I was thinking too.

Ms Rosemary Brown: Yes. As in the case recently with the Northwestern General Hospital where, in the process of negotiations, we were able to negotiate reinstatement for all but two of those nurses. But as senior counsel says, in 33 years one board has ordered reinstatement. That's to his memory.

**Mr Gary Wilson:** But it's very important to realize too that it is something that does come out of preliminary negotiations.

Ms Rosemary Brown: Yes.

The Chair: Thank you, Ms Brown. It's 12 o'clock, and I wonder if I can have help from members of the committee: What do we want to do? The Ombudsman offered to be available for more questions. Do you want to go ahead, proceed with a decision on this case, or do

you want to adjourn and meet at another date? I leave it up to you to decide.

Mr Gary Wilson: I would like to postpone the decision till next week, if that's possible, to go over the testimony that we've heard and give the case more consideration.

Ms Akande: I was really just interested in one point, this business of reinstatement. Talking about reinstatement now is certainly out of the question, but talking about reinstatement when this case was initiated and when the \$4,000, which is a separate consideration, was initiated, is a different thing. I'm still not clear on how seriously or how realistically the staff from the Human Rights Commission dealt with the whole question of reinstatement—not now, not in 1992, but way back there at the beginning of this issue. That's my concern.

Ms Rosemary Brown: Mr Chairman, with your permission, I would like to ask senior counsel who was responsible at that time to respond to Ms Akande's question.

Mr Frawley: The file in this matter reveals the steps that were taken by the investigating officer who handled this over its lifetime until it went to the commission for its initial decision; then of course it went to the office of reconsideration. That officer's notes, as reflected in the file and as the Ombudsman has seen, show that there were a series of steps that the negotiations went through, including the initial position of the complainant that she wished reinstatement, answers to that back and forth.

So I can tell you with complete certainty that the issue of reinstatement was addressed and was negotiated by the officer. It was done, ultimately unsuccessfully, but that does not mean it was not addressed with vigour by the officer. Sometimes you simply cannot convince a respondent to come up with all the things the complainant wants at a certain period of time.

I can also tell you that by the time it went to the commission meeting, the complainant had made it clear that that was no longer what she was seeking, that she had obtained other employment, that she did not wish to go back to that initial employer and that she was seeking only a monetary amount or the appointment of a board of inquiry.

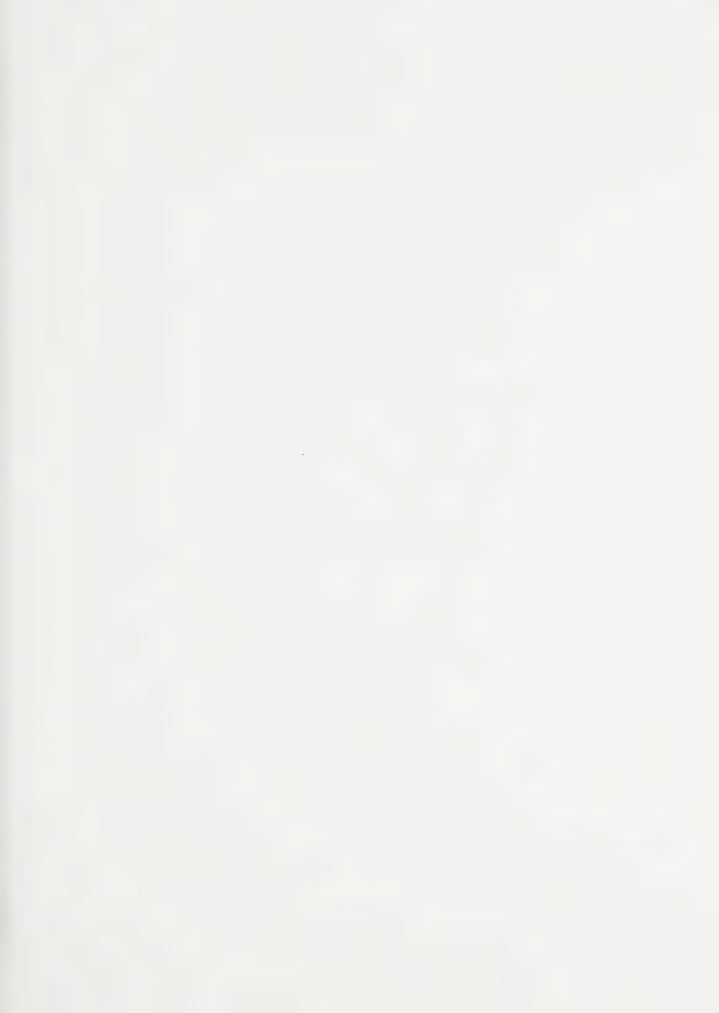
Mr Gary Wilson: I move that we defer dealing with the report until next week.

The Chair: Thank you. The meeting is adjourned until next Wednesday at 10 o'clock in the morning.

The committee adjourned at 1156.

#### **ERRATA**

No.	Page	Column	Lines	Should read:							
B-6	B-36	2	22	Ms Jamieson:	Just	t to sa	y, Mr	Wilso	on, tha	at a nun	nber
			32	Ms Jamieson:	I	think	one	area	that	holds	much







#### **CONTENTS**

#### Wednesday 8 June 1994

Ombudsman special report on the complaint of Ms R	B-69
Ombudsman Ontario	B-69
Roberta Jamieson, Ombudsman	
Ontario Human Rights Commission	B-76
Rosemary Brown, chief commissioner	
D. Scott Campbell, executive director	
Mark Frawley, director, legal services	
Errata	B-82

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Publications

B-1

B-1

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## Legislative Assembly of Ontario

First Session, 36th Parliament

## Assemblée législative de l'Ontario

Première session, 36e législature

# Official Report of Debates (Hansard)

Wednesday 15 November 1995

Journal des débats (Hansard)

Mercredi 15 novembre 1995

Standing committee on the Ombudsman

Organization

Comité permanent de l'ombudsman

Organisation



Chair: John L. Parker Clerk: Todd Decker Président : John L. Parker Greffier : Todd Decker

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 15 November 1995

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 15 novembre 1995

The committee met at 1009 in room 151.

**ELECTION OF CHAIR** 

Clerk of the Committee (Mr Todd Decker): Honourable members, it is my duty to call upon you to elect one of your own as Chair of the committee. Are there any nominations for the position?

Mr Bill Vankoughnet (Frontenac-Addington): I'd like to nominate John Parker.

Clerk of the Committee: Mr Vankoughnet has nominated Mr Parker. Are there any further nominations for the position? If not, I'll declare nominations closed and Mr Parker elected Chair of the committee.

Mrs Elinor Caplan (Oriole): That's the toughest election you'll ever have. Let's hope they're all that easy.

The Chair (Mr John L. Parker): Given my experience in yesterday's committee, I know that things don't always go that smoothly and they won't necessarily stay that way. But thank you very much for that.

Mrs Caplan: We certainly wish you good luck, Mr Chair.

The Chair: Thank you, Ms Caplan.

**ELECTION OF VICE-CHAIR** 

The Chair: I would now like to solicit nominations for Vice-Chair.

Mr Carl DeFaria (Mississauga East): Mr Chair, I'd like to nominate Tom Froese for Vice-Chair.

The Chair: Tom Froese. Are there any other nominations? Do I ask Mr Froese if he accepts the nomination? I don't hear any objection.

**Mr Rosario Marchese (Fort York):** We assume he will.

The Chair: Hearing no other nominations, I declare nominations for Vice-Chair closed.

#### APPOINTMENT OF SUBCOMMITTEE

**The Chair:** I'm now reminded that I am to solicit nominees for the subcommittee of this committee. Do I hear nominations?

Mrs Caplan: Our nominee will be Mr Hoy.

The Chair: Mr Hoy.

Mr Len Wood (Cochrane North): I nominate Rosario Marchese.

The Chair: Mr Marchese. I'm told that I'm automatically on it and so is Mr Froese, which suits me just fine.

Can I have a motion to appoint those subcommittee members?

Mrs Caplan: So moved.

**The Chair:** Mrs Caplan so moves. Done. I guess I put it to a vote.

All in favour? Carried.

We face an option at this point, and I invite direction from the committee. Yes, Mrs Caplan.

Mrs Caplan: In view of the fact that we have a caucus meeting which began 10 minutes ago, could I suggest that we defer discussions around the role and function of the committee to a meeting of the subcommittee and that we adjourn the meeting at this time?

**The Chair:** What's the pleasure of the committee?

Mr Marchese: Just for clarification, that the subcommittee discuss it, you mean, as opposed to the whole committee?

Mrs Caplan: I don't care if you want to have another meeting at some other time to discuss it, but it might be a good idea for the subcommittee to just sit and talk about it first.

Mr Marchese: Okay, sure.

Mrs Barbara Fisher (Bruce): I have no objections to delaying it because of the reason given, but I do have some objection to it just going to subcommittee. As a new member, it would be very nice to know what the role might be.

Mrs Caplan: Well, it would come back to the committee for full discussion. The subcommittee does report back its recommendations.

Mrs Fisher: I understand that.

Mrs Caplan: But I will withdraw that suggestion if you want to just have another meeting at another time to discuss the role of the committee. That's fine with us.

Mrs Fisher: Great.

Mr Marchese: I would accept that second proposal.

The Chair: So the proposal on the floor is that we just adjourn that discussion to another meeting of this committee?

Mr Marchese: Yes.

The Chair: To the next meeting, is that acceptable, which would be a week today?

All in favour? So decided. Any other business?

Mr Leo Jordan (Lanark-Renfrew): Mr Chairman, are we aware of any business that's going to be referred to this committee in the near future?

The Chair: I have nothing on the paper before me. Does anyone else have any material that they intend to bring before this committee?

I'm reminded that the Ombudsman has extended an invitation, and I don't have a formal invitation before me, but the signal has been sent and no doubt, if necessary, it'll be followed up formally that this committee meet with the Ombudsman at an occasion that's convenient. It has been suggested it would be the next meeting of this committee or the next one after that.

Mr Marchese: Good idea.

The Chair: I would suggest, since we've already ruled on this one—no, we haven't. We're still in business. So what is the pleasure of the committee on that suggestion?

Mr Marchese: Mr Chair, we should have the orientation meeting so that people are aware of the kinds of functions this committee would do, and once we are fully aware of that, we can invite the Ombudsman to come in

front of this committee to give a presentation.

The Chair: Makes sense to me. Agreed? Fine.

We will meet next week and we will deal with the role and purpose of this committee and deal with other business at that time.

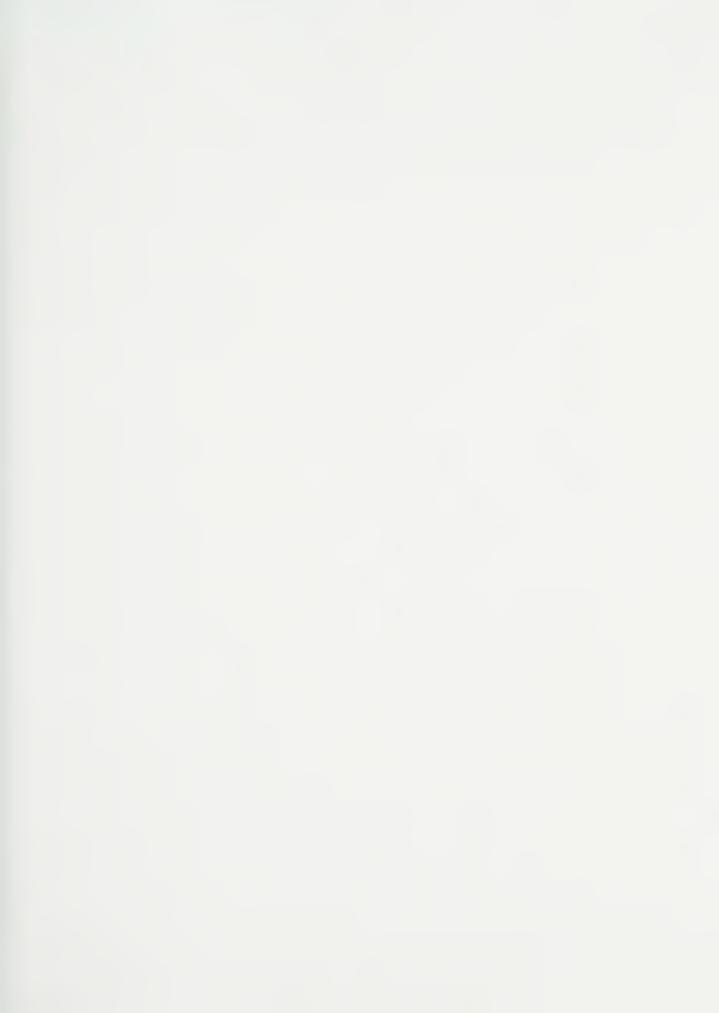
Mr Marchese: If I can suggest, Mr Chair: If there is any other useful reading the researcher has that we should have, you might send that to us a couple of days in advance so that we could read it.

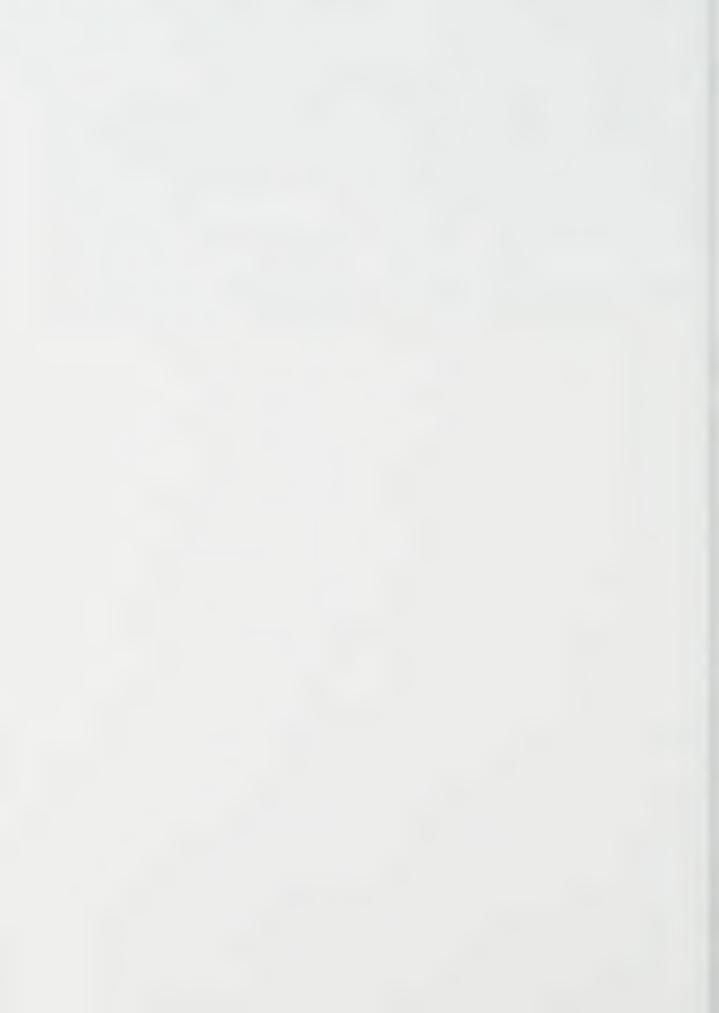
The Chair: I'm happy to do my best to comply with that.

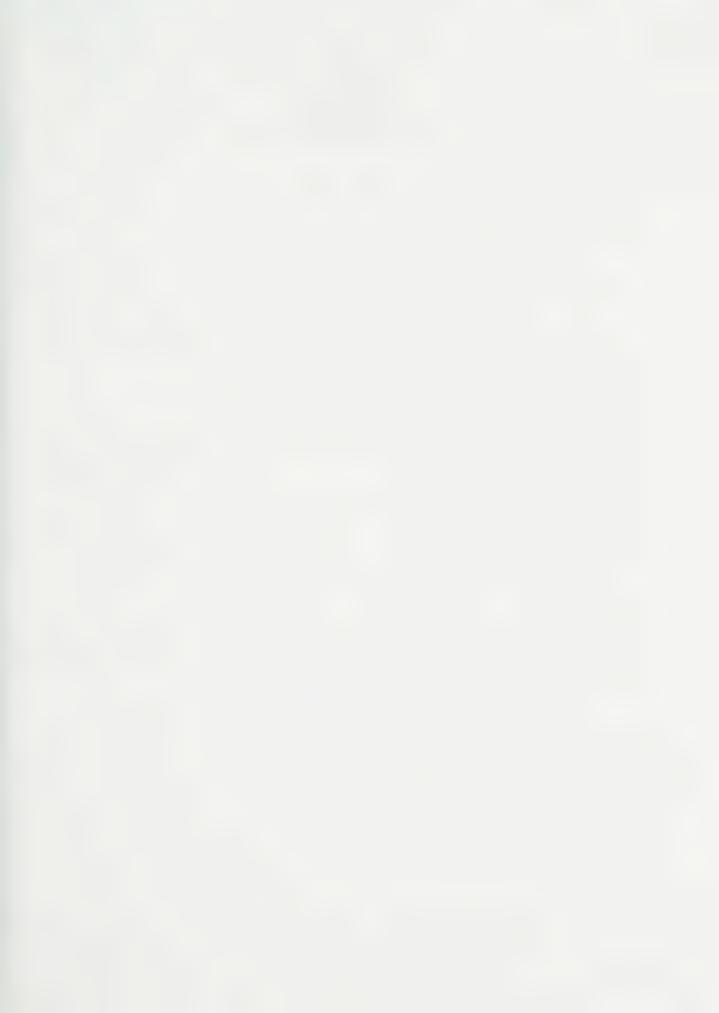
Mr Marchese: Very good.

**The Chair:** Good. Any other business? I declare the meeting adjourned. Thank you all very much.

The committee adjourned at 1014.







#### **CONTENTS**

#### Wednesday 15 November 1995

Election of Chair H	3-1
Election of Vice-Chair	3-1
Appointment of subcommittee	3-1

#### STANDING COMMITTEE ON THE OMBUDSMAN

- \*Chair / Président: Parker, John L. (York East / -Est PC)
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- \*Doyle, Ed (Wentworth East / -Est PC)
- \*Fisher, Barbara (Bruce PC)
- Galt, Doug (Northumberland L)
- \*Hoy, Pat (Essex-Kent L)
- \*Jordan, Leo (Lanark-Renfrew PC)
- \*Lalonde, Jean-Marc (Prescott and Russell / Prescott et Russell L)
- \*Marchese, Rosario (Fort York ND)
- Stockwell, Chris (Etobicoke West / -Ouest PC)
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B-2

B-2

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First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 13 December 1995

Standing committee on the Ombudsman

## Assemblée législative de l'Ontario

Première session, 36e législature

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#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 13 December 1995

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 13 décember 1995

The committee met at 1008 in room 151.

OMBUDSMAN OF ONTARIO

The Chair (Mr John L. Parker): I call this meeting to order. We are joined today by the Ombudsman, Roberta Jamieson, who has attended this morning at our invitation. I have suggested to the Ombudsman that the floor is hers to use as she would wish. I've let her in on the nature of the discussion over the past few meetings, that we've been meeting to look at the mandate of this committee, a bit of the history of this committee, with some thoughts as to where we will go with the issues that are before us, largely arising out of what we've seen from the work of prior Ombudsman committees.

In that context, I invite the Ombudsman to join us today. Madam Ombudsman, the floor is yours.

Ms Roberta Jamieson: Good morning. Bonjour. Sago, in my language. I'm very pleased to be here this morning to share some time with the committee.

I was particularly pleased to receive the letter from the chairperson expressing the committee's desire for a productive relationship with myself as Ombudsman, and I certainly echo that desire. I would like very much to create a relationship with this committee that's cooperative and mutually supportive.

Also, you may know that my staff are working very hard, as I am, in getting to know a lot of the new members of the Legislature. We've had a number of orientation sessions with your staff, and I have been out and about meeting with members individually, all in an effort—we do a lot of referral back and forth between your offices and mine—to get good communication channels going.

We haven't had a chance to come to know each other in this context, so I want to use this occasion, if I may, to set out my views on ombudsmanship in Ontario, and, having done that briefly, if there are any special issues that the committee would like me to discuss, I'm very happy to do that.

In a general sense, I really subscribe to a statement made by a predecessor committee, namely the select committee, when in 1977 it said, "The essence of the relationship between the assembly and the Ombudsman does not lie in any legislative definition of jurisdiction, but in good faith, mutual respect and cooperation, with open and free discussion between this committee and the Ombudsman."

This year we are happily celebrating the 20th anniversary of the creation of the post of the Ombudsman by the Legislature. This office, as you know, was created not by

government but by the Legislature as a whole in a nonpartisan effort. By opening government to the independent review of the Ombudsman, it really put in place a key part of the democracy of this province.

The growth of the ombudsman institution along these same lines in recent times around the world and within our society is truly phenomenal. Asian nations, African nations, Mexico, South America, are all adopting ombudsmanship to deal with maladministration and human rights issues. The United Nations in particular is placing emphasis on the ombudsman as one of the fundamental institutions as countries democratize.

We also know that newspapers, corporations and other institutions are setting up ombudsmanlike offices, and whole sectors—the banking sector, I guess, is the most recent—are adopting the ombudsman model to mediate between the public and the power of the banks.

We also know that members of the Legislature, of course, assist their constituents in resolving issues arising from their dealings with government every day. However, members also recognized when they created this office that their own efforts need to be supplemented by an Ombudsman who would have strong investigative powers, who could review government documents and actions, take evidence under oath, who could undertake complex, time-consuming investigations, and whose findings and recommendations would be seen as objective statements which merited careful consideration. Access to the Ombudsman's review not only reassures the average person that all is well in government, but also offers the opportunity for discovering, analysing, diagnosing and remedying individual and systemic issues when all is not well, especially where there is unfairness.

The need for such an effective means of remedying actions and inactions which may be unfair by public servants is at least as great as it has ever been. Government's involvement in the lives of the people of Ontario has expanded dramatically in recent decades. The changing composition of Ontario's population introduces new challenges, new complexities, and for the last decade in particular the public has been increasingly demanding independent assurance that their governments are acting fairly in their day-to-day work.

There's no question in my mind as I travel throughout the province that continuing public confidence in government depends on the public at large feeling assured that there is objective scrutiny of governmental administration, that there is scrutiny against unfairness, arbitrariness and inequitable treatment as a protection of the public's interest.

Today, individuals, farmers, small business people, senior citizens, retired public servants are among those who take access to the Ombudsman as a right which they use when they've been treated unfairly. The Ombudsman, in turn, provides an accessible, efficient and flexible means of assisting those who might be most vulnerable to unfairness or least able to defend their interests in resolving a problem with a government official.

Students, housing authority tenants, injured workers, recipients of social assistance and many others seek the Ombudsman's assistance by the tens of thousands each year, and the range of complaints includes all types of maladministration, from bureaucratic error to biased decision-making to abuse of discretion. Many complaints involve delay in government service. Often the complaints involve issues that are system-wide or systemic in nature.

The resolutions: In some cases the resolutions of these complaints may result in reassurance that in fact the matter the person was complaining about was handled quite fairly. In other cases where government has not been so fair, it may result in an apology or compensation, or indeed a change in a policy, practice or regulation that governs the day-to-day action of public servants.

I think we find now, 20 years after the Legislature established the Ombudsman as its officer, there are even more reasons why an Ombudsman is necessary for people and the public administration alike. There is rapid change in the nature of government itself, no question, and this has begun and will continue. There is a reduction in governmental operations, and this has an impact. People look for reassurance that they're going to be treated fairly.

The fiscal environment has shifted. The potential margin for error has increased as public servants attempt to do more with less, and changes in jurisdiction certainly create new causes for complaint. In fact, to echo a predecessor select committee that stated it well—this principle could never be more true—they said, "The concept of the Ombudsman rests on the principle that Parliament is the protector of the individual against the executive and the Ombudsman is the weapon in Parliament's armoury for this purpose."

In creating this office in Ontario, the Legislature adopted four principles which really do characterize the ombudsman on an international level as well. These principles continue to be the foundation on which my office is based and on which we do our work.

First, investigations are to be made in an objective and impartial manner. To ensure that this was done, the Ombudsman Act provided protection against pressures by government, the public service and the political aspects of the Legislature itself.

Second, the Ombudsman was given a broad range of discretion in which to exercise her judgement, and she must be free to exercise it without interference. In this respect, the Ombudsman can really be compared with the judiciary, who similarly are protected from both legislative and executive intervention.

Third, the Ombudsman must be able to maintain the confidentiality which is required of her by law so that the public will seek her assistance and so that privacy will be maintained not only for the complainant but also for the public servant against whom a complaint has been made.

Fourth, since the Ombudsman has no power to enforce her recommendations, she is able to remedy unfairness only through the respect and confidence and trust which is shown for the integrity of the Ombudsman. The success of my work depends on the government's willingness, when all is said and done, to listen and to correct its errors.

#### 1020

To maintain those four principles, the Legislature set its officer at arm's length from itself through the Ombudsman Act and provided a number of protections so that those principles would be observed.

First, they gave the Ombudsman a term of appointment which would make sure it went beyond the life of any given government, so that the Ombudsman would be free to criticize where she felt it was important or to raise government unfairness without being concerned about employment.

Second, they gave the Ombudsman the authority to rent office space and to manage her own staff matters on her own. They also gave the Ombudsman the power to conduct investigations and make reports as she saw fit when government was unfair.

On the other side, it certainly also provided for checks and balances to make sure accountability was in place: first, the requirement that an annual report had to be filed; second, the fact that audits must be done each year by the Provincial Auditor on the expenditures of the office; third, the fact that provisions were made for removal from office for cause if the Ombudsman was not performing her functions; fourth, the need for special reports to be tabled with the Legislature with full reasoning when unfairness was found.

They also set out a process in the Ombudsman Act in which I, as the Ombudsman, ultimately depend on the Legislature to obtain compliance by government organizations for any recommendations they don't voluntarily accept and adopt.

In about 99% of the complaints where I find government's been unfair, find in support, officials do in fact agree to implement the recommendations. We put a great deal of emphasis in my office on early resolution of issues where it can be done. However, there is that other per cent.

If government officials don't agree to implement the recommendations I've made, I then can take the matter to the head of an organization. If I can't get resolution there, I can bring the matter to the minister's attention. At the next step, I bring the matter to the Premier's attention. Right now, I have a number of cases that are at the first two levels. If, after all of that, I still can't obtain a satisfactory resolution, I may report the matter to the Legislature, and it's by tabling a special report with the Speaker. According to the standing orders, that report is referred to this committee.

Once I've raised it with the committee, at that point my work is done and I then look to the committee to do everything within its powers to see that the recommendations are enforced. I, in turn, must of course present the case with full reasoning for the committee.

I've made five such special reports to the Legislature. Upon tabling, two of them were settled before the committee held hearings and three proceeded to hearings.

I can't emphasize enough how important it is that that channel is there, how important it is that the Ombudsman has the power to bring a matter to the Legislature when government is not listening, so that the Legislature's powers and attention can be focused on it.

Public scrutiny at that time is given to the behaviour of government because, as you know, in the reports of the hearings that are held, the individual's name, who complained, is removed, but the agency is named, as are the officials. This is what's meant by the famous quote on the Ombudsman, "The lamp of scrutiny is brought to bear on government unfairness."

Public servants know that and the fact that they're aware of that, that their unwillingness to be fair, their unwillingness to correct errors, their unwillingness to implement the Ombudsman's recommendations can mean public scrutiny in the Legislature is a very key factor in their willingness to resolve cases satisfactorily.

In closing, I want to set out three or four issues which I feel are compelling and deserving of the Legislature's attention through this committee.

The first area is in regard to an innovation really in government which wasn't contemplated at the time the Ombudsman institution was created, and I'm referring to privatization of government services. I say not contemplated because numerous services which were once the exclusive domain of government and thus within the Ombudsman's jurisdiction to investigate complaints about are now being contracted out to the private sector, which is not within the Ombudsman's jurisdiction. As a result, people lose their right to complain about any unfairness and to have an objective review and investigation done of their complaint.

For example, we now receive complaints regarding non-profit and private agencies that have been contracted by the Ministry of Health and they provide, for example, residential care for children with serious psychiatric disabilities. We also receive complaints regarding agencies contracted by the Ministry of Community and Social Services. These agencies provide group homes for young offenders under the age of 16. In most cases, at the moment it's not clear that the Ombudsman can investigate those complaints about the contracted agency, and instead we are challenged to indirectly approach the complaint by determining if the ministry which did the contracting is doing proper reviews of the agency. So it's really at a distance. In a practical sense, the clients of these facilities don't really have much of a right to complain.

I would hope the committee would consider delving into this matter and finding a solution that balances the rights and needs of all parties concerned and I certainly

would be willing to cooperate, should you decide to do so, by giving further examples and ideas I may have on how this could be done.

A second matter is one reported on in my last four annual reports where I've described a rather unfortunate and unintended conflict that exists right now between the Freedom of Information and Protection of Privacy Act and the Ombudsman Act. It's my hope that the committee might recommend that the FIPPA be amended so as to exempt documents that the Ombudsman Act requires me to keep confidential. Those two pieces of legislation just don't mesh at the moment.

A third area which I think this committee could serve relates to the question of ensuring that the people of Ontario have adequate means available to them to complain about municipalities, hospitals, school boards and children's aid societies. You know, it's really ironic to me that while so many sectors are now resolving complaints by using the ombudsman concept, significant institutions like these in the province don't have such a mechanism. People do not at the moment have the right to an independent investigation of unfair behaviour by these agencies. It's particularly compelling to me that a number of these agencies deal with children and people who are in medical care.

#### 1030

Each year I receive about 3,000 complaints of this nature or about these institutions and I'm happy to talk with you about the kinds of complaints I get, but it's an average of about 15 or so each working day, often from people who have exhausted every available means of having their issue dealt with. As I've spoken to this in previous annual reports, there are a number of options through which the Legislature might deal with that situation. There are some really important issues here which I hope you would decide to address.

Those are my opening comments. I hope there will be many future occasions, formal or informal, in which we can continue to exchange views, especially at the initial stage of our relationship. I'm very keen to lay a solid foundation for a productive working relationship, which we both want and which is in the public interest.

If there are any questions on these comments, on any particular areas I've suggested the committee might address, or indeed on anything else, any other issues members might want to raise, I'm very happy to respond.

The Chair: Thank you very much. For the record, I should note that I began with the remark that the Ombudsman is here at our invitation and I failed to note that actually it was the Ombudsman who first contacted us and indicated she would be pleased to be available and meet with us. It was in response to that that the invitation was issued. In all fairness, it was the Ombudsman who suggested she would be pleased to meet with us.

I'm happy to place the meeting in the hands of the committee at this point. Are there any questions or comments?

Mr Doug Galt (Northumberland): First, my apologies for being a wee bit late. It wasn't intentional but rather accidental.

I was interested particularly in your last comments as they relate to municipalities, hospitals etc. That came as a bit of a surprise and I think I have already directed some of those concerns to your office. What are your suggestions? Are you suggesting maybe a second ombudsman's office or rewriting the act so it would come under your jurisdiction? Do you have any thoughts or suggestions on how that should be handled?

Ms Jamieson: There are a number of options and let me just, off the top of my head, review what some of them might be. Cities themselves or municipal governments could create their own ombudsman. The only problem I would see with that: The pros are you'd have something there; the cons are you might get a checkerboard throughout the province in the standards that would be applied. I'm sure there are more pros and cons. It would be expensive, I would think, to duplicate it.

You could also have contractual arrangements. One could contemplate a municipality contracting the Ombudsman to provide that service. That's one option that could be explored. Another option, of course, is to create a special ombudsman for municipal governments, and another one is to rethink my jurisdiction to include municipal government. That's what's been done in British Columbia quite recently. In Manitoba the Legislature has created an Ombudsman for the city of Winnipeg. In Quebec they've just created an Ombudsman for the city of Montreal.

There are a number of experiences out there, in the United States and here, that the committee might want to draw upon in coming to some conclusion, but those are some thoughts.

My only worry about leaving it to municipal government to do so for themselves would be that it would be done in a way that ensures the independence. One city that comes to mind is Portland, Oregon. They have an Ombudsman, but it's something called—it's like an executive Ombudsman, who works with the mayor, and there is always some question about how independent is that, and I think that is a critical piece that would have to be looked at.

Mr Galt: Thank you very much, I think that certainly covers the question. Thanks.

Mr Tom Froese (St Catharines-Brock): Thank you very much for coming. It's great to see you, first of all. I didn't get the chance to come and visit you. It didn't work out, that time schedule when I initially wanted to come, and it's great to have you here.

Looking over the report, the Ombudsman's report, for the 20th anniversary, 1994-95—and maybe I should give you a little bit of background. I'm in finance or I came from finance, so my question will be that way, but the report is about 60 pages of report, and a lot of verbiage on what your office does and so on and so forth, but I'm very interested and concerned that the finance part of it is only a very small blurb on page 58, on top.

Your office total expenditure is \$9.1 million. You had indicated in your submission a short while ago that you're concerned, and naturally so, to make sure that there are checks and balances. I'm a little bit surprised,

being a finance man, that the report does not go into a whole lot of detail with respect to the checks and balances on the financial side, as far as accountability, responsibility, and I'd just like to know how you perceive that.

My understanding is previous ombudsmen have spent some time and some verbiage on exactly—when you get into analysing or being fiscally responsible, I guess, in terms of cases, how many—or the time that's being involved in each case versus the money that's spent on these cases versus the outcome—does your office look into, and if so, why isn't it commented on in the report with respect to the dollars that are being spent on cases? Is it good sound judgement on looking into how much time is being spent, for instance, on cases and what value you are getting for the time that you've spent on that? Could you see yourself expanding on the financial data and reporting of what your office does?

Ms Jamieson: What's in the annual report on page 58 is—I think in its entirety—the audited statement which we print. I believe it's in its entirety, and that was a move to make it clear to the public what the statement is we were receiving from the auditor. You may know that the Ombudsman—that our submissions for funding and any issues raised about funding are usually done with the Board of Internal Economy. So any more detailed questions—that's certainly something we pursue with the board, as do the other officers of the assembly.

Are we conscious of value for money? Certainly, we make every effort to be. We in fact invited the Provincial Auditor to do a value-for-money audit, I guess it's two years ago now, which I tabled with the Board of Internal Economy also in its entirety.

We are very conscious of efficiencies. Do we do a percase analysis on an ongoing basis of costs? No, that's not something we do at the moment, and it might be something we should do. We have taken a snapshot of that, and the last time I tabled that in the Legislature it was done in a special report, I believe in the fall of 1992.

Mr Froese: You talked about cooperative relationships, good communication, productive relationships with our committee. In your opinion—and as you know, past committees have had some concern with where in relationship to your office—and I think it's clearly defined in the act what the responsibility of your office or who it is responsible to, to the Legislature. I don't know if anybody has a complaint about that, but over the last committee report we have seen that there's been some—how shall I say—not a clear understanding of what the role is of this committee, between this committee and yourself. I just would like to know, in your opinion, what do you feel the role of this committee is?

Ms Jamieson: In my opening remarks, I tried to set out the Ombudsman process that is in the act and does result with me having the ability to table reports where government does not listen and put things right, and how ultimately that ends up with this committee. I also have the opportunity to have dialogue with this committee over issues raised in the annual report, and I've raised this morning a number of other issues where we could fruitfully cooperate to bring about reform.

Mrs Barbara Fisher (Bruce): I'm not sure of the process here. Do we do it on a rotational basis or whatever?

**The Chair:** I was just responding to hands that I noticed but I don't want one side to dominate. You raise a fair point.

Mr Rosario Marchese (Fort York): It'll come around to us.

**The Chair:** Carry on. We'll get to the other side next. Don't want to get too far off track.

Mrs Fisher: I'll just go with a couple of questions that there'll just be short answers, but I'm sure ones that we discussed in committee already, and I think all of us will have some interest in the answers.

I'm not too sure yet where—and also reviewing the past reports, the audited statement and the bill itself and the act. First of all, how do you see complaints being brought to whom? Who do you see complaints going to, as they relate to the Ombudsman's office itself? I realize that ultimately we could end up with one bureaucratic system chasing the other, chasing the other, chasing the other and never getting anywhere, so I appreciate there could be a problem there.

I also should start by stating that I truly believe there should be an Ombudsman's office in the province of Ontario. I feel that it is the last right of appeal on the free basis and meant to be, and I'm sure it is, a fairness and an opportunity for people to have access without legal cost. So I totally support the functions that are set out in the act in establishing the creation of the office.

Having said that, ultimately, as you said, the Ombudsman responds to inquiries or concerns, I guess, raised by the Legislature. Tom sort of touched on this when we talk about then where do you go in the event that something isn't clarified and, in all fairness, from anything I've read, there has been a very tough relationship, I guess I will put it, one that we would very much like to change—I'll speak for me—one that I very much would like to change. I guess my first question is how do you see complaints regarding the Ombudsman's office or their activities? Where do you see those going and how do you think those should be handled?

**Ms Jamieson:** Are we talking about complaints about particular case decisions?

Mrs Fisher: Delay—not so much a decision. I respect the function that we're not to be involved in the decision itself, but I guess your function is to ensure that fair process has taken place. I guess our responsibility ultimately is also to ensure that, even at that level, that fair process has taken place. In the event that somebody feels not, how do you think we should handle that?

Ms Jamieson: One of the things we do at our own office is make it clear to people that if they feel they have not been treated properly or appropriately during an investigation or during the intake of a complaint, we encourage them to complain, I have a look at it quite independently of the investigator and the people who worked on the complaint. I'll often give it to someone else in the office to review that and so there is our own internal review of how someone may have been treated. That's certainly one thing.

If it's a financial complaint, that would most appropriately go through the Speaker to the Board of Internal Economy.

Mrs Fisher: I guess that would lead to my next question as it relates to finance then. I don't know an agency, board or commission, or a ministry, or an employee of the government that should not be, or is not, accountable to somebody.

I respect the fact that the budget's not prepared by this committee, it's prepared by your office. I respect the fact that it goes to the board of internal management. I wonder, however—that value for audit I'm a very strong supporter of, and I don't see a lot of it. I think that again Mr Froese was relating to that. I would really hope that to be serious about this from a committee perspective anyway, we could get into more of that with yourself.

To get a list at the end of an audited statement that merely says, "We had X number of occurrences within a certain ministry, or cases within a certain ministry" doesn't really help the committee. where the committee might be able to help itself with its own ministries, correct activities or actions that are happening there that are being decided out there in another world that we wouldn't even know about. I think we could lend more to each other that way in a supportive mechanism if we had, not details per se with regard to confidentiality disclosure—we all have to swear the same oath and we all have a responsibility not to disclose—but I'm talking about when you look at the auditor's statement and you take a look at page 57, for example, you will get into each of the ministries or areas where inquiry against somebody has been made. For example, in this case it's the Solicitor General and Correctional Services.

To avoid—I think at one time when we did meet that once I think it was something like 32,000 calls, inquiries, that year. That should be somewhat reduced and some of that responsibility I feel lies with this committee to make sure that we're taking corrective action within the ministries where on a repeat basis you're getting a call and a call and a call, and it's not changing.

Now the occurrences of denials have—I can't even understand how they go from 300 to three in three years. Something funny must be happening there, not funny in terms of skewing, but I don't understand how that could happen. At one stage, we were into hundreds and then all of a sudden in three years I understand went down to three, and I don't understand that.

My question is not to answer specifically today, but how do we open up that door for communication so that even as a committee we understand why we're here?

Ms Jamieson: You've covered quite a number of things in your comments, and I appreciate that your approach is to find ways that we can be mutually supportive. I'm not sure what you're referring when you say from 300 to three. I don't know what that figure is about. But you're quite right that when we report the statistics at the moment, we don't take them apart and say, "Ministry of Ed: 52" or whatever it may be. We did do this on the Solicitor General and Corrections. We get so many of them, and also to give a good idea of what they're about.

I know sometimes other ombudsmen have given a kind of a chart on this ministry, this many complaints. My worry about doing that is that it may lead people to believe, quite falsely, that a high number means a ministry is particularly poor. In fact, that may not be the case at all. A high number of complaints may also go together with a high degree of willingness to resolve complaints, and that's a positive statement. So I've been concerned about reporting in that fashion because it might lead to the wrong conclusions on the part of the reader.

Instead, what we've done is analyse the complaints to tell people more what people are complaining about, not who they're complaining against. So in the report now, we do on page 21 the kind of top 14 list of issues that people are raising about government, and that tells you each year as that list shifts around what people are most worried about. We've done that sort of analysis to raise that.

If a particular ministry or agency, board, commission, tribunal is being difficult, there are two ways that can come to the committee's attention. One is I can raise it in the annual report, and at times I do give what we call tarnished stars and gold stars: who is being cooperative and who isn't. The other way is when cases come forward. If I can't solve a case, if a ministry is being uncooperative or obstructionist or difficult, I certainly will, having tried and done the process the way the act sets it out—minister, Premier etc—table a special report, and I have in the past, so that can be raised with committee.

Mrs Fisher: If we take a look at page 57 as an example, I just wonder if it wouldn't be more valuable—it tells me that something probably isn't right when you see an increase. Let's take the top issue line here, "Health care inadequate or denied." When we see ourselves going from 750 cases to 1,085 over the period of three years, perhaps there's something that would avoid a lot of those complaints if we had an idea how to make the changes that would instigate those complaints to you to start with.

Whether it's a "value for" audit or whether it's—maybe it's time to start where we communicate back and forth. The idea of the Ombudsman's office is not to create cases so the numbers can increase, I would think. The purpose of it is so that people have a last right of appeal, preferably with no legal-financial cost, where fairness is the issue, the process of fairness.

But what I'm suggesting here is, how can we better help reduce your number of cases so that we're doing our jobs and the people are getting legislation that is better, that doesn't cause the problems? The only way I would think we could do that is with some input back from you which is not to be found in the annual reports as they're presented now, but maybe it has to be special reports until we work our way through some of this to make it better for all of us. I just don't see where the match comes that we can do the check and balance, that the system we're creating as lawmakers, if you will, is conducive to reducing your caseload.

I guess your best-case scenario could be one case in a year, and that would be our best; it would mean we're doing our job well. But I see an increase in cases instead

of decreasing, and I only from this get an example of one ministry. It would be disastrous, I think, to see the full run here, because it would just be huge.

Maybe there has to be another form of report-writing or case reporting or historical data so that we can help correct what's instigating all these cases to start with, and we're not doing that. I respect where your role fits, but your role should be diminishing, not increasing.

**Ms Jamieson:** Out of fairness to the ministry that's involved here, on page 57—

Mrs Fisher: Without specifics; it doesn't matter.

Ms Jamieson: I think I need to point out that the cases have not gone from 750 to 1,085; quite the contrary.

Mrs Fisher: I'm sorry. You're right: the opposite way. I stand corrected.

**Ms Jamieson:** They've gone down from 1,085 to 1,211 to, in fact, 750. So it's gone down in that area.

I appreciate that the best-case scenario, as the member describes it, is to have the Ombudsman with one case. While that may be the ideal we're all working towards, I think that would imply a degree of perfection that's probably not humanly attainable. Every complaint that comes in the door, for me, is not an indication that government is terrible or unfair or not working; every complaint is an opportunity for improvement. When I talk to the public about the opportunity to complain, I spend a lot of time saying how in our office complaining is a positive thing and, aside from kind of voting once every few years about government, this is one way you can have your say and improve things. As long as public servants are taking steps to improve the system—by and large they are—then that's a good story, a positive story.

The more cases I bring here to committee through special report, the less the public service is working, is receptive, and the less the Ombudsman is being listened to and able to bring reform. So I appreciate the numbers aren't there for that, but that's a good message—not a positive message—and I think the fact that the numbers of cases are going up is about a few things.

First, people are more rights conscious today, absolutely, and they are very concerned that their money is being spent appropriately and returned in good-quality public service.

Second, they're more than ever now under stress, they're frustrated and they speak out much quicker. The private sector will tell you that as well as the public sector. So I think there are a number of things.

And third, I think we're doing a good job of public education so that people know when it's appropriate to come to the Ombudsman office. There are a number of factors, but I don't think it's necessarily bad that the number of people coming forward is on the rise.

Mrs Fisher: I guess there are two ways of thinking. I'm glad that there are, actually. I appreciate what you're saying, that because they don't end up here in denials perhaps the Ombudsman's office is doing its job well. That might be true. It's a fair comment. I believe, however, when they're on the rise it also tells me, with all due respect to the point that people are more aware

and more conscious and more willing to speak out and take action and observe their rights, that there's something wrong. For them to have to do that tells me that potentially there's something wrong.

I'm just asking how we could, if we could, cooperate with yourself to recognize what those issues might be and how we could help correct them. That's all I'm suggesting.

The Chair: We have a question from Mr Marchese.

Mr Marchese: Just on that issue, Ms Jamieson, because I happen to support what Ms Fisher is saying, I understand what you're saying about what is of interest to you is what the complaint is as opposed to against whom, or where it's coming from, the origin of the complaint.

I like comparative data from year to year. I also like to have a sense of the number of complaints that come from different ministries, and if there's a perception that comes out of it, well, that's a perception we'll have to deal with. But it gives us an opportunity to deal with those statistics; it gives us an opportunity to ask those questions: What does it mean? What prevention is going on? Is there a pattern of complaint coming from a particular ministry? Is it occurring every year?

In establishing that pattern, we get a sense as a committee of what needs to be done. Then either yourself or even the ministry could say, "Well, this is what the problem is and this is how we're dealing with it." But it does give me a better sense of what's going on and it does give me an opportunity to ask more effective questions about what is going on. Because ultimately I want to get at prevention, not at an Ombudsman-driven kind of system where complaints keep on coming and you're there to keep on solving. I know you'll never self-destruct, because complaints will always be there; I understand that. But I am one who likes to get to prevention of problems—patterns and then prevention. So how do we do that?

I support the idea of comparative data from ministry to ministry, because I think that's good. I wanted to make that statement. I'm not sure I said anything different that might change your answer, but do you have a comment? 1100

Ms Jamieson: Yes, I do have a comment. One of the things we are trying very hard to do is sketch out the patterns and the trend analysis. In last year's annual report we do some of that. We certainly will continue to do that, and that report will come forward to the Legislature and the committee.

We talk about delay in this particular last report. We talk about how ministries are dealing in an uneven way with new fiscal realities. So what we've tried to do is do the analysis of the trends as we see them as they come in the door and what they're saying to us, in an effort to raise with the Legislature where some of the areas are for improvement.

I agree with you on the prevention aspect certainly. Every time we get a complaint, I ask staff—you know what a Rubik's cube is? Yes? I ask staff to take the complaint and look at it from all of the angles as though it's a Rubik's cube and kind of move it around and so

on, so that when we're dealing with a particular complaint, we determine whether it's isolated or whether it represents a systemic issue. Is this happening in Timmins, North Bay, Windsor, Ottawa, Toronto? When we solve or resolve the complaint by convincing the ministry to do whatever, we make certain that we put into place mechanisms that will prevent it from happening again.

One good example that we often use of a case like this would be a 15-day notice requirement in government. Now a 15-day notice requirement for a member of the public to bring forward an application for government to reconsider something might make sense in itself where our transportation is good, our communication is good. It doesn't make sense in the north. It might be 15 days before you even get the letter, never mind 15 days to respond. There is a complaint, an issue, that potentially will affect all government.

When we look at each issue, we are making sure that we maximize the opportunity that gives us and put that together with the perspective the Ombudsman has to look all across government and to fix that. So I certainly agree with you that that is a focus that must be had.

Mr Marchese: Just to continue with that—I had other questions, but I'll come around afterwards—I appreciate the answer with respect to how you deal with systemic problems. That was part of my other question on how you deal with that. Perhaps when it comes around I'll continue with that again.

I appreciate much of what you're saying around how you deal with all of these questions, but it is our sense as a committee that we would like to have the comparative data and the graphs which show number of complaints brought against a particular governmental organization. This is the feeling of this committee and we're likely to recommend this. Is that something that you would be able to respond to affirmatively or not?

Ms Jamieson: I think with the caveats that I have provided, I'm certainly willing to share information with committee. There are some concerns I have about how, you know—I don't want committee to draw the conclusions that I've reached, but I'll certainly take that into consideration and see how I can best respond to that request.

Mr Jean-Marc Lalonde (Prescott and Russell): I too support what MPPs Fisher and Marchese just mentioned. I always like to compare the data from year to year, but we have to keep in mind that at times the data are deferred, sometimes the numbers increase and sometimes they decrease, and there are reasons for that. Sometimes you get good information. It's because of better information, better communication, but it is also the fact that sometimes people have lost confidence.

Lately I've met the two reps from the Ombudsman at my office, and I brought to their attention—well, really I've asked at least 10 different questions and I've yet to see at what point the Ombudsman has to be involved. I will have to meet with them at a later date because I don't know what their tasks are really at this point because of all the questions I've asked them. They said: "Well, no, it goes to municipal. No, it goes to a government department. It goes to federal."

But when I look at this report here that you referred to, at one point about school board referral, according to what I was told, you people are not supposed to get involved at that point and here you say that you spoke to the supervisor. You've made the phone call to the school board, but really it wasn't under your responsibility to make that phone call. You've made this. It is registered as one of the complaints.

But I really feel that the Ombudsman commission should come up with a report not identifying the complainant, but it's only at that time that we could see really that if government has to come up with some changes, because we also referred in there that the Ombudsman should not have jurisdiction to review cabinet decisions. So really I'm not clear yet on what the responsibilities of this commission are.

Ms Jamieson: Let me take the last point that you raise first. The Ombudsman does not now nor have we ever had the authority to review cabinet decisions. I think that's quite clear.

On the other question about school boards and jurisdiction, I cannot do a formal investigation into a complaint about a school board, as I said earlier, much like children's aid societies, municipal government and hospitals, unless it's a psychiatric facility. I can, however, look at complaints about the Ministry of Education and Training and how it responds to a complaint about the school board. Sometimes it's difficult to see. It's complex, this picture, and there are gaps for sure.

However, if we have a complaint in front of us and we know very well with a simple referral we can solve it, and we know there is no place for people to go, we often will do it. I will not do a formal investigation. We may make a phone call because we know exactly how to solve it and we'll do it as a public service and let that person know what is possible further down the road.

The other point that you raise about comparative data—and it's been raised a few times. In fact, the statistical data that appears on pages 54, 55 and 56 of the last annual report does have comparative data for three years.

Mr Lalonde: Just the last point that I would like to bring up. Yes, I did have a visit with two members of your commission and they spent at least half a day without having a customer to come and see them. I think there's definitely a lack of communication. People don't know what their tasks are. I offered them my office in the future because they have to spend some of your funds really when they have to spend some time in the riding. I think the information has to be looked at. How do you inform the people of what the responsibility of the Ombudsman is?

Ms Jamieson: I certainly agree with that and would welcome any opportunity, suggestion, ideas. It's a constant challenge for us. We are out and about and do have intake clinics in public libraries, community centres. More than ever staff are going out to community as opposed to waiting for people to come and find us. I don't think you can say you're providing a public service if people don't know you exist, so we're spending a

considerable amount of time. We've also tried to be quite strategic about it so that we use our resources well in accomplishing that.

1110

The other thing that I'm very pleased to hear about the close relationship with members is we do have people come to us about issues that we refer to members. We hear about political issues and we say to people, "I'm sorry, that's not us; you go and see your member," and you hear about issues that you often refer to us. I'm very pleased to see that develop.

There are some times we'll go into a community and we'll just raise awareness. The next time the district officer goes back to that community, there's a lineup at the door. So it really varies throughout the province as well.

The Chair: Okay, there've been a number of hands in the last few minutes, but if anyone's got a comment on that point, I want to hear you.

Mr Marchese: It was on public education, and you've touched on it, because part of the recommendation we have here is that the Ombudsman should report annually on public education activities undertaken, should include a statement of specific objectives, nature and number of activities undertaken and evaluation of effectiveness of programs in advancing those objectives.

I suppose we could come up with some suggestions at some point if we discuss this ourselves, as opposed to leaving that responsibility totally to your office. But it is a good statement here about how you do public education and measuring effectiveness, because I think it's important. I like the fact that you're saying you're going out to communities, as opposed to waiting, because normally a complaint-driven system is like that: You simply wait. The problem is that a lot of people simply don't know that you exist or what you do. Unless we tell them what you do, we have a problem.

But in the context of this, we have some communities in Ontario that are less informed than others, for a variety of reasons, and language is usually a problem. Literacy is also a problem. So the question for us becomes, how do we reach some of those communities more effectively, given the nature of language barriers and literacy barriers as well? So the fact that we may go some place sometimes doesn't mean those people we worry about get to that committee, because a lot of the people who have these problems tend not to go to these committees, to these meetings and so on.

So how do we reach them? Do we use the ethnic media at all? Do we use the larger media in some way to reach them? So these are the questions that I would ask in relation to public education. Are you thinking about those things?

Ms Jamieson: Yes, certainly. We do use the ethnic media. We do use press releases for the mainstream media when we are travelling to a community. We have actually divided the province into 10 areas. We've done an analysis of who is our public and what are our challenges in each area. We make it a commitment to be accessible to people. We provide materials in about 20

languages now and make a commitment to serve people in not only English and French, but every language they would like to speak, because we know Ontario is diversity. You can't, again, offer a public service if people can't speak to you. So we do that.

We also do materials in audio tape and we will receive them in audio tape. We also do materials in Braille. We also, when we visit communities—and we have, in the last couple of years, made it certainly our business to go out to communities. To first nations communities, for example, we go with an interpreter. I myself have been up the James Bay coast. Our staff regularly go to remote communities. A lot of it is introducing to them for the first time that an Ombudsman exists.

You've really struck an area that I'm personally very strongly committed to. One other initiative I'll tell you about involves a special project we have going on right now with the Canadian Centre for Victims of Torture. I'm very proud of this. If there is one group for whom it is difficult to understand that you can actually complain about a government, it's people who've come to this country from countries where torture is a reality, and torture administered by government officials. So knowing that was a particular challenge, we have worked with the Canadian Centre for Victims of Torture and offer them an opportunity to come in and volunteer in our office and work with them to get the news out to their community.

We are more than ever visiting cultural centres, committing to a regularized schedule of taking complaints in cultural centres—I believe the Native Canadian Centre here in the city, we go on a regular basis once every two months—and that is more and more our approach. We know, for example, that some of the complaints we get about government service come from people who can't get service or assistance because they don't have an address. They may be homeless. So we know that's a particular challenge and we've tried to find ways to reach out to those people.

That is what I think public service is about, and it doesn't stop at five o'clock when we all look at our watch and leave. Staff work evenings at these sessions and weekends. I'm very proud of some of our initiatives in this area.

I'm acutely aware of the challenge and the degree of creativity that's needed to meet it. It's still a big challenge for us; no question in my mind.

The Chair: I don't want to cut off this line of inquiry, but I want to make sure everyone gets their chance. We'll get back to you.

Mr Marchese: Just an additional point. I appreciate the answers. I appreciate that the Ombudsman is doing a great job in this regard. A quick comment: the Chinese community, for example, watches Chinese television—80% of the Chinese community watches television in the cable program. I'm not sure how many of them read Chinese papers. I don't have that statistic in my hand—

**Ms Jamieson:** Me either.

Mr Marchese: —but I know the Portuguese community watches the channel 47 program. I'm certain that they watch more of that television than they actually read the

community newspapers. I say this because that's a better medium than written communication with people.

**Ms Jamieson:** I certainly appreciate that. One of the other things, just before I stop on this point as well, I've been particularly pleased to also do some cable TV with members who've taken it upon themselves to promote the office as well. Any way I can cooperate with members, whether it's in your yearly calendar or what have you, to get that information out, I'm only too willing to do.

Mr Bill Vankoughnet (Frontenac-Addington): I too want to welcome the ombudsperson here today because I really believe that the role that an ombudsman plays is very important in today's society.

Having said that, I have some very grave concerns as a politician and the fact that I believe as politicians we've delegated too much to many agencies and commissions and so on, as well as legislated certain functions away from politicians. Today I think we're almost irrelevant because not only are politicians becoming very frustrated, the people who put us here are very frustrated in that we have very little to say when someone comes to us with a complaint. What do we do? We do the best we can under the circumstances without any control or authority and we send them off to someone else that perhaps, depending on their opinion or their view, then we get into bureaucratic abuses of power where they may or may not look at things the same as a politician.

Politicians come and go; bureaucrats sometimes, whether it be 10 years or whether it be a full working career, are there and it's very difficult sometimes to get the thinking of people or the needs of various communities, their views, through the system that we've almost destroyed, I believe, because I don't think politicians today have the same role as they had 30, 40, 50 years ago. A politician at one time, when a person came to them with a complaint, they had some authority to go to a bureaucrat and say: "What's the problem here? Let's get this resolved one way or the other." Today that is very, very difficult, it is very frustrating, and I would like to see your role complement more what we as politicians are doing to serve the fairness and equity of the people who put us here.

I believe that sometimes we get overwhelmed with glossy reports. By no means am I criticizing, because I know there are reports much glossier and bigger and thicker, and they overwhelm politicians with absolutely nothing.

#### 1120

I'm concerned about the cost of not only your office, but I'm concerned when you say we need an Ombudsman federally, we need an Ombudsman municipally. As you know, we have 850-some municipalities in Ontario. Where do you draw the line? Do we need one with a big bureaucracy in Toronto? Then do we need one for every municipality? Do we need one for every board of education? Where does this stop? We're overgoverned now. We have politicians coming out of our ears, and we need more bureaucrats?

I'm just concerned about the reporting process. You don't report to us as a committee; you go to the Legisla-

ture. You say, "First of all, I go to a minister, then I go to the Premier and then I go to the Legislature." Where are we as individuals? We don't seem to have the control or we don't seem to have the individual input that I think our constituents want.

I like to think of myself as a good constituency person, that when someone comes to me with a problem, I can get it resolved. I've tried to do that, but I'm being frustrated in that everything is being delegated, whether it be because of the Charter of Rights or because of various freedom of information and privacy acts. I am frustrated, as are most people I've talked to who, as newer politicians, come here with an idea that they're going to represent their people, and when they get here they don't have that control.

Do you see any way that we, as individual members of Parliament, can help you to do your job without increasing the bureaucracy and the cost; effectiveness in getting the fairness and equity back to individual people who may have complaints? I appreciate very much what you're doing individually, getting out to communities and talking to people. They've come to me and they feel very good that you're coming into communities, such as those in eastern Ontario, and that is very helpful.

But I hope you can appreciate that I, as a politician, am very frustrated at the continuation of the erosion of my authority. I know that as a legislative person I can do certain things, but I feel we've given too much to bureaucrats collectively and we have retained hardly anything.

At the same time, I want to say this change is because of what's happening in society in general, communications and so on. You've talked about, for example, people coming to Canada and Ontario who speak different languages. I believe this is a problem in itself. Are we basically an English-speaking country, or do we become a melting pot where we have just everybody coming in here and doing their own thing? Do we have everyone speaking English or whatever it may be? I don't know, but the fact is we're becoming so fragmented that we're just becoming irrelevant in terms of trying to govern this province or this country. We're not resolving the problems. It's getting worse instead of better.

I would like to know from you what we can do as individuals to try and serve the people who are actually paying for this. Would, for example, a report to this committee be helpful, or would you see problems with that, rather than it going first to the Legislature? When it goes to the Legislature, where does it go? It gets bogged down there somewhere. It gets tabled and that's it.

Ms Jamieson: You've raised quite a number of points. I'll try and respond to the ones where it's appropriate for me to respond.

I've heard what you said about the power shift. There's no question but that government has become, as I said in my opening remarks, much more involved in the daily lives of people over the last decades, and a lot of it has been through bureaucracy and regulation and so on. I think, as that's taken place, it is so important that there be a standard of fairness against which all these people and actions and activities can be judged. I think that puts the onus and responsibility squarely on me to make sure that happens.

You've asked how we can work best together. I think by having very good communication, a very good referral service between our offices when people come in the door. People, when they come to see me, and I'm sure when they come to see you, are frustrated. They have had it, they want an answer, and they don't want to wait forever for it. The sooner we can sort out for them what the solution is to their problem, the better, the more satisfied they'll be, and working effectively to help one another accomplish that.

Where it's a matter that members are best able to deal with, and members do every day, then certainly we refer there. Members themselves often bring me complaints on behalf of constituents or they refer the constituent. It's usually a judgement call they make on the fact that this complaint is one that requires investigation. That's where the Ombudsman has the authority and the power to do, and that's often the case.

Where else can we work together? I think by knowing that if government won't listen, there is going to be a committee that will be strongly supportive and willing to be non-partisan in bringing the public scrutiny on a government agency that will not cooperate. That's essential.

The third part is in some of the areas, the four issues I outlined at the beginning of my remarks, ensuring that as government service is realigned and redefined we don't lose the checks and balances on bureaucratic maladministration that need to be there, whether it's through privatization or whether it's through finding good, effective ways of making sure that people who deal with the children's aid society, for example—I mean, we can read the papers. Some of the things that are happening that people might want to have an investigation into should be there. Does it mean 800 agencies? I don't think so. Does it have to be phenomenally expensive? I don't think so either.

At the moment, our office is there to serve the Ontario public for less than a dollar a person. That's not a lot of money. I think there could be a good, healthy discussion of how municipal actions could be looked at by an investigator without ballooning a bureaucracy.

I hope I've covered at least the high points of what you asked.

Mr Vankoughnet: Can I have a couple of small supplements? For example, when you mention the efficiency of only a dollar per person, that's fine, but—

Ms Jamieson: Less than.

Mr Vankoughnet: Less than. That's fine, but you may have 400 or 500 of these people running around, and that's not so cheap. I guess what I'm saying is that bureaucracy has a tendency—not just you, but other agencies, boards and commissions, or special groups such as yours doing things. It becomes costly and there's overlap and duplication and so on, especially if you have municipal groups. So I question that.

The other thing I really wanted to ask was, do you treat a situation differently when an individual comes directly to you, or if I were to phone your office and say, "A constituent has a problem, and would you look into

this"? Are they treated the same, or do you say, "Because a member of Parliament has phoned, I'd better get on this right away and make sure we get this resolved"?

1130

Ms Jamieson: We try and make sure that every complaint that comes in the door is dealt with fairly and equitably. The only time we will say, "Deal with something with urgency," is if the particular circumstances of the file demand it.

If an inmate from a correctional institution is complaining about being refused a temporary absence permit to attend a funeral of a family member on the weekend, and it's a Friday, we deal with that right away. If it's about someone who can't get their driver's licence renewed and they're starting a job next week and they're being told, "Wait three weeks," we might move more quickly on that. If it's someone who has a particular medical condition and is awaiting some attention from the Ministry of Health or a northern health travel grant issue, we will act on that.

But it's the circumstances, not the person bringing it, that commands the attention. I would certainly be roundly criticized for being unfair if I looked at who brought it as opposed to the circumstances of the person represented by the file.

Mr Pat Hoy (Essex-Kent): Good morning to you. We're focusing on today's problems and maybe some that the committee perceived in the past, but I'd like to touch on one that you spoke about earlier that may affect the future, and that was privatization. You said you have a concern with non-profit and profit organizations now that, as an example, reflect on children. We'll call that a broad statement for now. Do you envision that employees who could be affected by privatization in the future would be left without any recourse, under the current structure of the Ombudsman's office?

Mr Jamieson: I'm sorry, the last part again, Mr Hoy? Mr Hoy: Would employees be left with no source of recourse, under privatization, under the mandate of the Ombudsman's office as it is now?

Ms Jamieson: At the moment, we investigate complaints from employees of government agencies only if they don't have a right to grieve or after the grievance is exhausted. If services are privatized, my concern is that not only would we not be able to look at employee issues, but we wouldn't be able to look at complaints from the clients of these agencies, like the group homes, like the homes for young offenders, residential care and whatever else may be privatized.

I've raised this question because I think it is timely and I think it is quite serious when people would be losing the right to complain. Where would they go? I suppose they could sue, but we all know the courts are full, and who can afford it? And look at the backlog. I don't think that's an appropriate option. I am seriously concerned about that.

Mr Hoy: Thank you for helping me with that.

We were talking about financial matters earlier this morning, cost per case and duration of case. I have some limited experience in having people request that me of or an organization I was with. It's very difficult. How easy would it be for your staff to track the cost per case and duration of case? I simply leave it there.

Ms Jamieson: Not easy, you're absolutely right, because some cases are an hour and some cases are months. We do keep statistics on this, and they are in the report on page 52. We do know how long it takes on average to resolve cases—11 days—and I'm very proud of staff achieving that record. We also know that 90% of the cases are dealt with in less than 72 days. Again, I'm very proud of that. I think that speaks very well of efficiency, but as I say, some cases involve one person, two phone calls, some involve a review of a file, some involve 100 people, some involve one district office, some involve a whole ministry. It really depends, and it's very hard. I would think it would be hard to calculate. I don't know if it's impossible, but it's not easy.

The Chair: Mr Doyle, your hand was up a while ago. Mr Ed Doyle (Wentworth East): Yes. Actually, part of the question has been answered because of previous

questions, but you mention municipalities, school boards, hospitals, and I would assume the same thing, that you get complaints from the top now too, from federal, for

example.

There must be an effort on your part, and I think you've alluded to this in any case, that you do make an effort to try and help these people out in any case, even though it may not be your jurisdiction, that you try to guide them or whatever. Do you know how much of your resources this takes for complaints that really are beyond your jurisdiction?

Ms Jamieson: I would say it's certainly not a huge part. I can't give you a percentage, but we find that if someone calls us and presents an issue to us—staff are very good at referral—to give them, and we now have it on computer, a name and a phone number at the end of the conversation really doesn't take a great deal of time and effort. I think it's better than saying to people: "You're in the wrong place. Goodbye."

Mr Doyle: We have the same thing in our offices, of course too, when it's a jurisdiction that isn't ours, so we try to guide them and direct them. You had mentioned the need for perhaps ombudsman-type systems in municipalities and so on and perhaps in the federal government and so on. I was just curious to see how much of a demand there was of you.

Ms Jamieson: Oh, there's a demand. On the municipal cases alone, 2,000 or 3,000 a year that we've counted. I have people coming up to me at public functions all the time and I don't count those who are asking me about municipal complaints. These days it's things like snow removal, garbage collection, Wheel-Trans, those sorts of things.

**The Chair:** I'm looking for hands.

Mr Len Wood (Cochrane North): I thought you saw my hand earlier. Thank you very much for coming forward and explaining the role of the office of the Ombudsman. I know you're aware of the large land mass that my riding takes in because you mentioned that you were up the James Bay coast, and my riding also takes in the Hudson Bay coast. I'm happy to hear you say that you've been up there and have an understanding of their concerns.

My riding is probably a little bit different from the member's across who asked the question, should English be the only language in Ontario? English is a minority in my riding. The aboriginal people make up a large percentage of the population, the francophone population is very proud of its culture and language and the English minority gets along very well and respects the other two cultures and languages that are up there.

A lot of the issues up the coast would be under federal jurisdiction, and I don't know if it's a question or not, but you might want to make a comment afterwards: Some of these people feel it's their right, that the federal government should allow them to have indoor plumbing and indoor toilets instead of having to use outdoor toilets and they shouldn't have to live 18 or 20 in a home, that these services should be given. I know we worked for the last five years on trying to work jointly with the federal government in helping out some of these severe conditions.

#### 1140

We could probably put the equivalent of about 60 or 70 provincial MPPs into that land mass if you divide it up the way it is in land mass in southern Ontario. It's very difficult for a member, myself, Gilles Pouliot and a number of other ones, to service these areas, because to take a trip into one of these communities and spend a couple of days there, you're talking a charter flight which is somewhere around \$7,000 or \$8,000, the time that you need to help those.

I'm one of the people who is happy with any assistance I can get to help my constituents with some of their concerns and trying to get their conditions to what a lot of other people have taken for granted in other parts of the province, where you have snow removal that is easy to come by. I understand you're probably going to get a large number of complaints from northern Ontario as far as snow removal is concerned, because winter hasn't started yet; it only starts on December 21. I understand the winter budget has all been spent on southern Ontario for the whole winter, so I don't know where the money's going to come from to maintain the roads the way people expect.

I just want to leave it at that. I know you're aware of the situation that we have up in this part of the north, but I wasn't too sure if the members here had been or were aware of it. The situations are unique and we welcome any extra assistance we can get to serve the constituents there. So I just leave it at that. If you want to comment, I'd appreciate it.

Ms Jamieson: I probably should have said wachea then to you—good morning—which I believe is the expression in the communities on the coast.

The conditions in first nations communities, particularly in the north and particularly in remote locations, are a disgrace to this province and to this country—no question in my mind. It continues to amaze, depress and challenge me as to why this is the case and why it's allowed to continue. When we go to these communities, it's particularly concerning to see these situations, the living condi-

tions, the housing conditions, which we experience nowhere else, I think, in the province.

It's a particular challenge because, you're right, the federal government is involved, the provincial government is involved, the first nation itself is involved, and some of the issues there are very difficult to untangle when we are challenged with a complaint. We do our best and we do make a commitment to go into these communities, because the idea of them being able to access us, even in Timmins, just doesn't work in terms of real life.

We get complaints about everything, from the conditions I spoke of earlier: hydro, a big area of complaint; health services; access to services generally. While the federal government is very involved, you still get the provincial government dealing with birth certificates, drivers' licences, the whole gamut. You get a lot of issues on Ministry of Natural Resources matters, mines and development issues, land use permit issues. There is still a range of provincial matters that are quite properly within our area and we do our best to solve them.

But you raise an area that's a particular challenge and it's certainly one that we've worked very hard to make sure our staff are sensitive to, not only the conditions but the cultural differences—the differences in making decisions, in even making a complaint.

There are many first nations communities where making a complaint is done in a storytelling fashion and so it's highly inappropriate to come in and sit down with my form and sort of say, "Okay, get to the point," and I've got to kind of condense it to three lines here. Often it will take an hour and a half and the complaint comes at the end of a story. During the story you are assessed for your trust—are you listening to that person, do you care about their issue—and then the trust is there at the end to disclose what the complaint is. We have done some training of our staff to make sure that when they go into first nation communities they have that sensitivity. We have interpreters with us so that we make sure we hear what the person wants to share with us.

These are some of the things we are doing, but I share with you my concern because it does continue, and we will do our best with the resources we have to make sure we continue to provide service to these communities.

Mr Galt: As you talked about going out to the community and taking your organization out to them and making sure they're aware of your services and that you are there, and it came up earlier, my concern is the overuse, the misuse, the frivolous and vexatious requests that come to your office. How in fact do you control this? You were using a lot of examples, from snow removal to an inmate wanting to get to a funeral, to some concerns over a driver's licence—"We need it tomorrow"—when they should have maybe been applying for it six months ago and had all kinds of time. That does not strike me as the type of thing that should be going to your office. I guess I see tribunals and a lot of other organizations that are out there that I would have thought would have doing some of these things. Is it unlimited, or how do you screen out some of these maybe unnecessary requests?

Ms Jamieson: I would say first of all that there is a fundamental difference between the kind of 500-plus agencies, boards, commissions, tribunals that are out there and our office. The Ombudsman is an officer of the Legislature and it's the only independent unit that can investigate the actions of government with the powers it has, including the actions of all these 500 agencies, boards, commissions and tribunals. There's a fundamental difference between ministries, boards and the Ombudsman. How do we sort out which ones are deserving and which ones are not and which ones are vexatious and frivolous? Very few, frankly, on their face are vexatious and frivolous, and those are the only ones I'm entitled to turn away. I can't turn away complaints.

Having said that, as we begin to have a look at something, if it strikes me that the person's expectation of what we can accomplish is unrealistic or what they're asking for is unreasonable or if they've been dealt with quite fairly, I will discontinue an investigation; I will not keep going after that. There are some people, however—you used the driver's licence example—who come in and expect service from an agency of government to be of a high quality—why does it take three weeks, six weeks, three months to do something as simple as reissuing a form?—and find that very difficult to accept, and often I find that very difficult to accept and I think I'm obliged to raise that question.

Many of the other issues that come to us involve people who've had their social assistance denied or reduced, injured workers who have been turned down for disability benefits and will require a much more lengthy review into their file, a look at the Workers' Compensation Appeals Tribunal decision, and involve much more work. So it really depends on the nature of the issue, but I can tell you that very few on their face are vexatious and frivolous, and people feel very strongly about every one, partly because they may have been to six offices before they got to us.

#### 1150

Mr Froese: First of all, with some of the questions-I can appreciate your sitting there and hearing a lot of the statements that were made—in my opinion they were political statements and not really questions, and I appreciate your trying to read through some of that stuff and answer the questions with the direct response as to how the Ombudsman's office operates with respect to some of the complaints you receive. I appreciate that.

I'd like to get specific answers to questions. As you know, this committee made a report to the Legislature, to the Speaker, in April 1993. I would specifically like to get your comments on the recommendations on page 148 and on. I'm sure you received the report. I know it's some time ago. As we all know, nothing has been done with looking at those recommendations, but I'd specifically like to know your comments on such things as the recommendations that were made to the Legislature with respect to the scope of the Ombudsman's mandate, the process of the Ombudsman's operation and the relationship with respect to the Legislature and this committee, by the committee of the day at that time.

Ms Jamieson: It has been some time ago, you're quite right, Mr Froese, and I did not at the time make a

report or a comment on the content of the recommendations that were contained in that report. I'm very happy to discuss individual issues that are in the report, either today or on another occasion if you would like to do so. I'm in the Chair's hands. I'm looking at the clock. How would you like to do that?

The Chair: I was just noticing that myself. If you had a general comment, maybe that would be appropriate. If we're going to get into specifics, maybe we would put that over to another day.

Ms Jamieson: I really don't have a general comment that I think would be useful to share now. If we get into some of the issues that members wanted to raise or some of the recommendations members were considering, if there are some from the report, I'd be happy to respond at that stage. I did not respond at the time and we'd have to think about what was the context then, what's the context now, what's the goal we're trying to achieve in working together.

Mr Froese: I know you generalized the comment, but one question that might be asked and it's probably in the recommendation—it may or may not be; I don't know specifically—but how would you feel about a change in the act where your office or the report would come to the Ombudsman standing committee?

**Ms Jamieson:** Do you want to do specifics now then? I'm happy to do it.

The Chair: I've got five to 12, quite happily, which is probably more time than we have on the wall, and I want to reserve three minutes for this committee to discuss its own housekeeping, so with that in mind, two minutes for some discussion, I guess, and then we should wrap this up.

Ms Jamieson: It's a big question and I'll try to give a two-minute answer. I have serious concerns about that because that would fundamentally change the mandate that the Ombudsman Act gives the Ombudsman. I talked earlier about the need for independence. I can tell you that everywhere I go in this province I am asked: "Well, how is it that you're independent? Where do you get your funding? Whom do you report to?" I explain this no less than three times a week, probably a lot more when I'm on the road, every place I go.

The public I deal with want to be sure that I am an independent officer, as I say I am, of the Legislature. I think that if you get into creating the relationship between a committee of the Legislature and the officer that's like a board of directors and an employee, you fundamentally change the role. If the public feels that I have a committee, particularly with a majority of government members, each day telling me what to do, how to do investigations, how to handle budget, they're not going to believe that I can truly, objectively investigate government. The credibility on which I rely will be gone.

I feel very strongly about that, only because it changes fundamentally the whole task that was given to the Ombudsman and, frankly, that the ombudsman has all around the world. It's a very different concept.

The Chair: Thank you very much. I think we should bring this discussion to a close at this point. Ms

Jamieson, I want to express my appreciation, and on behalf of the committee the committee's appreciation to you for joining us today and sharing so forthrightly in the discussion we've had. I look forward to continuing this discussion in future.

Ms Jamieson: Thank you so much. Nyawah.

The Chair: In just a minute or so, I'd like to discuss with the committee where we go from here. I have a suggestion but I'm interested in hearing from you.

Mr Froese: Let's hear your suggestion.

The Chair: My suggestion is that the subcommittee meet and form a view and that we then meet again at the call of the Chair, having first met with the subcommittee. In the absence of any discussion on that, I will take it as a given that that's what we will do.

Mr Marchese: Could I ask you, Mr Chair, I suspect we may not have to meet in the intersession, but if we do, that's a request we have to make of the House leaders. That should happen before the House folds. So is it your sense that's something we should talk about before we disband this group? Maybe we should discuss it at the committee.

The Chair: The second part of my comment that I didn't put explicitly on the record is that the subcommittee should meet pretty darn soon, maybe as soon as we break this morning.

Mr Marchese: Maybe we should discuss this with the committee while it's still here.

The Chair: I'm happy to do that.

Mr Marchese: Otherwise, if the subcommittee meets, we're not meeting again. The House will break tomorrow. So we should discuss whether or not there's a need for us as a committee to meet during the intersession.

**The Chair:** I'm happy to do that.

Mr Froese: My understanding is that you would meet with the subcommittee and that the motion you suggested was that it would meet at the call of the Chair. I would assume, if you don't call a meeting, then we're not sitting.

Mr Marchese: No, Tom, the way it works is that if you don't get time, if the House leaders don't agree for this committee to meet during the intersession, it doesn't matter that the subcommittee or the Chair says we're going to meet.

Mr Froese: I know, but that's the Chair's responsibility with the subcommittee. We can discuss if we want to meet during the—

Mr Marchese: That's the point. If there is a need for us to talk about some issue or other, then we need to get approval from the House leaders for us to meet. Whether or not we need one day or two days or two meetings for discussion is something we should be chatting about? Otherwise we're holding this discussion off until reconvene.

My sense is that we should build continuity into our discussions and not wait until we reconvene and we begin this discussion. I'm not sure how many days we might need for that discussion, but we should continue with this and build. How many days, I'm not sure. Does anybody have a sense of that?

Mr Froese: I certainly would agree with that, that we should meet during the recess of the House. We're not going to wait two and a half months to discuss this issue again. My recommendation is that if you met with the subcommittee, as Chair, I assumed it was a natural that you would go to the House leaders, or whatever the procedure is, to ensure that we're allowed to meet, or to inform them that we're meeting during the recess.

The Chair: Let's start just by sounding that out. Is there a general wish that this committee meet during the intersession?

Interjections: Yes.

The Chair: Let's allow the subcommittee to be guided by that indication and we'll do our best to put something together.

Mr Marchese: But I think the committee needs to make the motion, not the subcommittee. We won't be able to meet again, right?

Mrs Fisher: You have to bring a report forward from subcommittee to committee to even get to there. His point is very right. We have one day.

The Chair: How about the committee authorize the subcommittee to—

Mrs Fisher: Strike the dates.

The Chair: Strike the dates, exactly.

Mrs Fisher: With consultation.

Mr Marchese: You're thinking the subcommittee can meet now, or when? Tomorrow's the last day, Mr Chair.

The Chair: Let's meet right away, see how much we can do now—

Mr Marchese: We're pretty well ready to make some suggestions. Perhaps a week might do it, to be able to talk about things that we need to talk about as a committee. I'm not sure we need more than that. Do people agree?

Mrs Fisher: A full week?

Mr Marchese: Yes. We could spread it out. We could spread the days out. We don't have to meet four days in one week. I'm not sure how the House leaders would deal with that kind of request, but what we would like is a week's time to be able to do our work and it may be that we spread that out over a two-week period.

Mr Hoy: If required.

The Chair: What I'm getting out of this is that there's a general wish that we convene, there's a recognition that it's going to be the House leaders who decide when and whether we can meet.

Mr Marchese: True, but it's important for us to make the request for a week or two, and so on, and then they have to deal with that, but if the committee doesn't bring that recommendation and we leave it to them, we won't meet.

The Chair: Okay. Let's deal with what we can deal with right now. How long would people like to get together for? Two weeks?

Mr Hoy: I would think a week would be a lot.

Mrs Fisher: I would recommend up to a week so that we can adjourn earlier if we are done earlier. I think

there are some pretty clear things we could talk about. It's not hard to fill an agenda. if this is the right way to do it, I would recommend that we request permission to meet for up to one week, dates to be set by the Chair upon consultation with members.

**The Chair:** In all practicality, in consultation with the House leaders.

Mr Marchese: Possibly, or probably.

**The Chair:** How does that sit with people?

Mr Carl DeFaria (Mississauga East): If you're talking about up to a week, do you mean up to five days? Because we may not sit in a week, period. So are you talking about up to five days?

Mr Marchese: It's usually four days unless you specifically say that it's five.

Mrs Fisher: That should be enough, up to four days.

Mr Marchese: I would just say a week.

Mrs Fisher: It doesn't matter. No problem.

The Chair: On the understanding that it may not be continuous. We may grab a day here and there for a total of a week, whatever a week is.

Mrs Fisher: We can hope that it's not continuous.

The Chair: Does anyone want to put that in the form of a formal motion and we'll get that on the record.

Mrs Fisher: I move that we request the House leaders' permission, to be taken to the House, to meet for up to one week during our intersession.

Mr Marchese: I'm not sure about dates, how we state that, to be determined—whether the House leaders allow us to stagger the days in the event that's what we need.

Mr Hoy: Not necessarily consecutive.

The Chair: Dealing in terms of the formal motion—

Mrs Fisher: To finish my motion, not necessarily with consecutive dates.

**The Chair:** Is everyone happy with the motion as it's expressed? Any discussion on that? The call would come from the Chair?

Mrs Fisher: At the call of the Chair. Dates to be set by the Chair.

The Chair: Any discussion on that?

Mr Marchese: No, that's fine. In consultation with the subcommittee, obviously.

Mrs Fisher: In consultation with the membership.

The Chair: I think that's a given but I'm happy for that to be in there.

All in favour? Thank you. This meeting is adjourned. *The committee adjourned at 1205*.





#### **CONTENTS**

#### Wednesday 13 December 1995

Ombudsman of Ontario		B-:	3
----------------------	--	-----	---

#### STANDING COMMITTEE ON THE OMBUDSMAN

Chair / Président: Parker, John L. (York East / -Est PC)

Vice-Chair / Vice-Président: Froese, Tom (St Catharines-Brock PC)

Caplan, Elinor (Oriole L)

\*DeFaria, Carl (Mississauga East / -Est PC)

\*Doyle, Ed (Wentworth East / -Est PC)

\*Fisher, Barbara (Bruce PC)

\*Froese, Tom (St Catharines-Brock PC)

\*Galt, Doug (Northumberland L)

\*Hoy, Pat (Essex-Kent L)

Jordan, Leo (Lanark-Renfrew PC)

\*Lalonde, Jean-Marc (Prescott and Russell / Prescott et Russell L)

\*Marchese, Rosario (Fort York ND)

\*Parker, John L. (York East / -Est PC)

Stockwell, Chris (Etobicoke West / -Ouest PC)

\*Vankoughnet, Bill (Frontenac-Addington PC)

\*Wood, Len (Cochrane North / -Nord ND)

\*In attendance / présents

Clerk / Greffier: Decker, Todd

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## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 16 October 1996

Standing committee on the Ombudsman

Visit by New South Wales parliamentary delegation



## Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 16 octobre 1996

Comité permanent de l'ombudsman

Visite par une délégation parlementaire du Nouvelle-Galles du Sud

Chair: John L. Parker Clerk: Lisa Freedman

Président : John L. Parker Greffière : Lisa Freedman

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 16 October 1996

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 16 octobre 1996

The committee met at 1016 in room 151.

### VISIT BY NEW SOUTH WALES PARLIAMENTARY DELEGATION

The Chair (Mr John Parker): We're very pleased this morning to introduce two guests from New South Wales. I suppose three guests; I should include the project officer as one of our guests. We are being visited this morning by Mr Andrew Fraser and Mr Bryce Gaudry, who are members of the Legislative Assembly of New South Wales. They are also members of the Ombudsman committee of that assembly. They are joined by Helen Minnican, who is the project officer associated with that committee.

Mrs Margaret Marland (Mississauga South): Mr Chair, I hosted a parliamentary delegation from New South Wales in August. You had about five committee members travelling from your Parliament. The Clerk's department organized their visit to the assembly, and we spent the whole day together. It was most interesting.

Mr Bryce Gaudry: We had the pleasure earlier this week to visit your national Parliament. We've come here from the UK, where we also visited the Parliament there, and of course the traditions both in a parliamentary sense and in a social sense between our countries make our visit very pleasurable and very interesting as well.

The Chair: Of course, it's just getting better with each

step. That's good to hear.

The subcommittee met to discuss this morning's visit and we thought that what we would do is keep it informal but invite our guests to perhaps share a few comments or remarks with us to lead off. Then, to give them some perspective on how things are done around here, we'll invite Philip Kaye to give some comments reflecting our experience with the Ombudsman and the whole Ombudsman regime here in Ontario and then open it up for a general discussion. Bryce or Andrew, I'm happy to turn it over to you now.

Mr Gaudry: Really, I suppose in an opening way, the Office of the Ombudsman in New South Wales sits in a context of a whole range of public authorities dedicated to lessening corrupt behaviour and maladministration, and I imagine that the same would apply in Canada. There's an increasing emphasis in government towards good government in the public sector. We have both the Ombudsman oversighting maladministration and the ICAC, as we call it, the Independent Commission Against Corruption, which has a role of investigating and rooting out corruption in the public sector and also putting in place systemic change across the public sector. We also have the Auditor General, whose role of course is to audit

the accounts of government and investigate obviously serious and substantial waste of public moneys in public authorities.

Our committee has been given a new brief. You may be aware that in New South Wales at the moment we are having a royal commission into our police service and into corruption in particular within the police service. That royal commission will wind up its powers in January and its role in investigation and in cultural change within the police service will be overtaken by the Police Integrity Commission, which was put in place by an act of Parliament this year. This committee then will have the oversight role both of the Ombudsman and the Police Integrity Commission.

In the context of the work done by the Ombudsman in New South Wales, about 70% of the Ombudsman's work actually is dedicated towards complaints against the police, and I'll be interested to hear the role your com-

mittee plays.

We have a role of oversighting the work of the Ombudsman, monitoring and reviewing the exercise by the Ombudsman of the Ombudsman's functions. We can then draw matters relating to that to the attention of the Parliament. We can report on any changes that we consider necessary to the function, structure or procedures of the Office of the Ombudsman. We can also inquire into any question referred to us by both houses of Parliament.

In relation to that, our committee has just concluded a report to the Parliament on the operations of the Protected Disclosures Act. That's a further act in New South Wales to aid public officials in eliminating corruption. It's more commonly referred to as the whistleblowers' act, and you might have an act similar to that within your jurisdiction. It is an act that is put there to give public officials protection when they blow the whistle on corruption, maladministration or serious waste of public moneys they have noted within their department.

The act had a proviso in it that it would be reviewed, and the Parliament tasked our committee to undertake that review. The Ombudsman plays an important role in being an investigative authority under that act, as do the ICAC and the Auditor General. We've just completed that review and have made recommendations to the Parliament as to how the act may be improved. It has only been in effect for one year, but we noted that the act, while it was in principle working, did not seem to be providing adequate protection to those people who did blow the whistle. Many of them have complained that they have been subject to serious reprisals.

That's just one of the roles the committee undertakes. Ms Minnican has provided you with a brief on our role. You'll notice that there has been a series of inquiries undertaken by the committee. It's interesting to note that the Ombudsman Act was passed in 1974, but the actual committee structure was not set up until 1990. Since that time there has been a series of inquiries undertaken by the committee into the role of the Ombudsman and the functions undertaken, and the adequacy of either those functions or the funding of the Ombudsman's office.

Very briefly, you'll see that in 1992 the role of the Ombudsman in investigating complaints against police was undertaken. That led, in its recommendations, to some very substantial changes to the Police Act and a new Police Services Act being brought in, which has led to many more complaints in the police service being conciliated and more serious cases being oversighted much more closely by the Ombudsman. There was also an inquiry into funds and resources of the Ombudsman and the adequacy of those funds and resources to the office carrying out its function.

I was not on the committee at the time. I think Mr Fraser was chairing that committee. It may be more pertinent for him to make some comments on that, but probably in terms of a general worldwide trend to small government, it didn't lead to increased funds going to the Ombudsman. It led more to changes perhaps within the management systems within the Ombudsman's office.

There's also access and awareness, and I can recall reading in your recommendations that you have also been quite concerned about issues of access to the Ombudsman and awareness of the role and function of the Ombudsman in the community. The committee made quite a number of recommendations there, and they have led to some recent improvement in funding to the Ombudsman and the tasking of specific offices, particularly towards access to members of the aboriginal community in New South Wales.

We also have a six-monthly general meeting with the Ombudsman. The committee will also extend that in its relationships with the new Police Integrity Commissioner, who is a different person. That gives an opportunity for us to place before the Ombudsman a series of prepared questions which the Ombudsman replies to in a formal sense and then speaks to at the committee hearing. That is obviously followed by the same thing I'm sure occurs here, a series of questions without notice from the committee which may plumb both those issues and a whole range of other issues. Sitting at this end of the table, I feel the same sense of insecurity that I'm sure any public official does appearing before a committee.

I might just leave my introductory statements there. Mr Fraser may have a different focus or view.

Mr Andrew Fraser: Not really a different focus or view. I was a prior chairman of the committee. One of my major interests in the role of the Ombudsman is access and awareness. Canada being somewhat similar to Australia, vast differences and outlying areas are of great concern to me.

We are intending on November 8, when we get back, to actually take our committee to the country, to my electorate — the best part of New South Wales, but I'm somewhat parochial. We're going to ask her to come up there. We're going to have a general meeting with her

and try and focus the role of the Ombudsman back into the country New South Wales, the original New South Wales.

I believe one of the major problems in New South Wales is that the Office of the Ombudsman is in Sydney and a lot of country people tend not to realize the role and the accessibility of the Ombudsman. It is a pity and it's something that I personally would like to see expanded. We had our access and awareness program. It always comes back to one thing, I suppose, which is money. I believe all governments find it very hard to adequately resource all areas of government, and a lot of the time it's a matter of making funds available in order to get those services out to the community.

It is very hard for the Ombudsman to set up offices in regional areas, so it's a matter of the local member of Parliament and local government departments advising the people they're dealing with of their rights with regard to the Ombudsman.

The other thing, just briefly, that Bryce didn't touch on is that our committee also has the power of veto on the appointment of both the Police Integrity Commissioner and the Ombudsman. That power is such that when the government makes an appointment we have the opportunity to veto that appointment, but I suppose it's much the same as what we have here today. The government normally has the numbers on the committee and while it's not necessarily a rubber stamp, it is normally the way the government goes.

It is an important power I believe the committee should have because oftentimes committee can come up with information the government may or may not have, and it's an opportunity for the committee itself, in camera, to probably get to know the future Ombudsman or future Police Integrity Commissioner and ensure that you've got a working relationship going on.

The committee itself is an oversight committee. A lot of time the recommendations that are put forward, especially with regard to funding, are not taken up by the government, but it does have an important function in recommending changes to the act, changes to the way the Ombudsman operates and an opportunity to discuss fairly openly with the Ombudsman at our regular meetings where we believe as a committee the emphasis of the Ombudsman's activities should be placed.

Mr Gaudry: Just in terms of the committee structure itself, the committee is bipartisan. There are six members of the government party and five are non-government. Those five non-government are two independents, a Liberal Party member, a National Party member — yes, there are 11. You'll notice that it's Legislative Assembly and Legislative Council, the Legislative Assembly being the lower House and the council the upper House in New South Wales. So both Houses are represented, but of course the Legislative Assembly has the actual balance in terms of the numbers.

The method of appointment: In terms of the government members, they are nominated from within the caucus and the other parties obviously ensure who will be representing them within their internal structure and then

that comes before the House and the appointment is then made formally within the Legislative Assembly itself.

We work in principle in a totally bipartisan fashion and, as Andrew said, perhaps in the veto situation it would be most unusual for a veto to be put into effect. In fact, I don't think in any of the jurisdictions where that applies it has been put into effect, but it's certainly an important function to have. It also gives an opportunity with the new appointees when they first appear before the committee for them to realize that we do have oversight powers and that they do have a responsibility to the committee and through the committee to the Parliament, rather than having any direct responsibility to executive government. I'll just leave my comments there.

Mr Fraser: One other thing: I don't know whether it was made clear that the committee itself has the power to instigate inquiries into areas of operation that it sees fit, such as access and awareness. It doesn't necessarily have to be a direction of the Parliament for the committee to undertake an inquiry into the operation of any area of the Ombudsman or the Police Integrity Commissioner. So the committee can, normally at the discretion of the chairman in discussion with the committee, instigate investigations into certain areas and come up with a report that recommends changes or other — it could be legislative or operational changes within the role of the Ombudsman and it's up to them and possibly up to the Parliament, more probably up to the Ombudsman, how they alter or change their mode of operation. The committee in that sense does have wide-ranging powers to look at any area of operation with regard to the Ombudsman.

The Chair: Thank you very much. Helen, did they get it just about right?

Ms Helen Minnican: Just about, yes.

**Mr Gaudry:** She will burnish the edges somewhat.

The Chair: We have invited Philip Kaye to share a few remarks with you as to our structure and our experience in this province with the institution of the Ombudsman and this committee.

Mr Philip Kaye: As the Chair has said, I've been asked to give some brief comments on the structure of the Ombudsman Act of Ontario and the role of this committee.

An Office of the Ombudsman was established in this province in 1975 with the passage of the Ombudsman Act. The appointment of an Ombudsman had been promised in the speech from the throne in 1975 "as a safeguard against a growing complexity of government and its relationship with the individual citizen." It was further stated in the speech from the throne that such an office would "ensure the protection of our citizens against arbitrary judgement or practices."

The Ombudsman's independence from government is reflected in his or her appointment under the Ombudsman Act as an officer of the Legislature. The appointment is made by the Lieutenant Governor in Council on the address of the assembly for a term of 10 years. Further terms are possible, although in general the Ombudsman must retire upon reaching the age of 65. There is also a provision whereby the Ombudsman is removable at any time for cause.

With respect to the office itself, it must be audited annually by the Provincial Auditor and must submit annual reports to the assembly.

The general mandate of the Ombudsman is defined in the Ombudsman Act as follows: "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his, her or its personal capacity."

Complaints then must concern a governmental organization defined as a "ministry, commission, board or other administrative unit of the government of Ontario, and includes any agency thereof." This definition means that the Ombudsman does not have jurisdiction over federal, municipal or private bodies. In addition, such bodies as children's aid societies, public hospitals and school boards are not seen as being subject to a sufficient degree of governmental control to be considered governmental organizations.

Another limitation holds that the Ombudsman may not investigate a complaint where there exists some further avenue of appeal or right to apply for a hearing on the merits of the case. This limitation is reflected in the Ombudsman statement that the Ombudsman is a place of last resort after all other avenues of appeal have been exhausted.

Other limitations prohibit the Ombudsman from investigating complaints respecting the courts and the proceedings of cabinet.

The Ombudsman's powers, however, may be exercised despite any provision in any act that the decision, recommendation, act or omission in question is final or cannot be appealed.

The Ombudsman may investigate complaints launched in one of three ways: First of all, by the person affected; secondly, by any member of the assembly to whom a complaint is made by the person affected; and thirdly, on the Ombudsman's own motion. Systemic problems have been examined by ombudsmen either in the context of a particular complaint or on the Ombudsman's own motion.

The Ombudsman may decide not to investigate a complaint or to discontinue an investigation under a range of circumstances. Where an investigation is conducted and it appears that the Ombudsman may make a report — which in practice is known as a tentative report — that "may adversely affect any governmental organization," the Ombudsman must give the organization an opportunity to make representations respecting that report.

After completing an investigation, the Ombudsman must decide whether the conduct in question falls in one of the following categories, and the categories are very similar to the categories in New South Wales's Ombudsman Act. They are:

"(a) appears to have been contrary to law;

"(b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision...or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

"(c) was based wholly or partly on a mistake of law or fact; or

"(d) was wrong."

1040

The Ombudsman must also decide whether "a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations." Furthermore, the Ombudsman must decide whether reasons should have been given for a decision made in the exercise of a discretionary power.

Where any of these circumstances exist, the Ombudsman must report his or her opinion, with any recommendations, to the governmental organization concerned. If the Ombudsman feels that the governmental organization has not responded adequately and appropriately to the report within a reasonable time, the Ombudsman may provide reports on the matter to the Premier and subsequently to the assembly. These cases brought to the assembly's attention are known as recommendationdenied cases. It seems that a similar process is followed by the Ombudsman of New South Wales who, if not satisfied that sufficient steps have been taken in due time in consequence of a report, may report to Parliament on the matter. The New South Wales legislation, however, continues that within the next 12 sitting days, the responsible minister must make a statement to Parliament in response to the report.

The Ombudsman Act does not give the Ombudsman the power to enforce his or her recommendations. In this regard, the current Ombudsman, Roberta Jamieson, has said that the Ombudsman relies upon respect for her office to obtain the implementation of her recommendations by governmental organizations. Political pressure is also generated by reporting these recommendation-denied cases to the Premier and to the assembly.

Investigations by the Ombudsman must be conducted in private. In addition, the Ombudsman's oath of office and secrecy prohibits the disclosure of any information received as Ombudsman except as is necessary to establish grounds for his or her recommendations in a report.

With respect to a legislative Ombudsman committee, in Ontario the first legislative committee dealing with the Ombudsman was established in 1975, the year the Ombudsman's office was established, as a select committee on guidelines for the Ombudsman. Ombudsman committees quickly became a permanent part of the Ombudsman process, and 10 years later, in 1985, the select committee approach was changed to that of a standing committee.

Unlike the Ombudsman committee of New South Wales, Ontario's standing committee on the Ombudsman is not created by statute. There is no reference at all to the committee in the Ombudsman Act. Instead, the committee is established by the standing orders of the Legislative Assembly.

The committee's terms of reference under the standing orders can be broken down into three areas: Firstly, reviewing and reporting on the Ombudsman's annual reports; secondly, reviewing and reporting on reports by the Ombudsman of recommendation-denied cases.

Since the creation of the Ombudsman's office, the Ombudsman has referred 134 recommendation-denied cases to the committee. In 54 of the cases, the Ombudsman's recommendations were accepted prior to a review of the committee. The committee has consequently

reviewed 80 cases. The committee has fully or partially supported the Ombudsman in approximately 72% or 73% of these 80 cases. Looking at the cases where there was some committee support, in 85% of them the government's subsequent response was, in the committee's view, satisfactory.

The number of recommendation-denied cases has declined substantially in recent years. Since the 1990-91 fiscal year, there have only been five such cases, all in 1993.

A third aspect of the committee's mandate involves the formulation of rules for the guidance of the Ombudsman. The Ombudsman Act empowers the assembly to make general rules for the guidance of the Ombudsman in the exercise of his or her functions. In the standing orders, the assembly has delegated to this committee the responsibility for formulating these rules. Rules proposed by the committee are presented to the assembly for adoption. General rules were adopted by the assembly in November 1979. Since that date, no further rules have been made.

Among other matters, the rules set a time frame for the tabling of the Ombudsman's annual report, explain the term "adverse report" and clarify the procedure for the reporting of recommendation-denied cases by the Ombudsman to the Legislature.

There are two functions which the committee has performed but no longer does which I'd like to outline briefly. The first one involves the review of estimates. Between 1983 and 1989 the Ombudsman's estimates were reviewed by the Ombudsman committee as well as by the Legislature's Board of Internal Economy.

In 1989 the estimates role of the Ombudsman committee was eliminated when the standing orders were changed to state that the estimates of all ministries and offices were deemed to be referred to a new standing committee on estimates. The estimates committee, however, is not authorized to examine all the estimates referred to it. It must consider at least six but not more than 12 ministries and offices. The estimates not selected are deemed to be passed by the committee. The Ombudsman's estimates have never been selected for review by the estimates committee. Accordingly, since 1989 the Ombudsman's estimates have been reviewed by the Board of Internal Economy only.

Another function previously performed by the committee involved the handling of complaints received from members of the public with respect to the service provided and procedures followed by the Ombudsman's office. These complaints were reviewed by the committee's subcommittee on communications from the public. In the cases it reviewed, the committee refused to act as a court of appeal from Ombudsman decisions. Accordingly it would not review complaints about the correctness or reasonableness of the Ombudsman's decisions. Instead, the focus was on the procedural fairness of the Ombudsman's investigation. For instance, was there excessive delay in processing a complaint?

The committee assumed a role regarding these complaints for two reasons: First it would be of assistance in identifying the need to make new rules, and second, it was considered important that individuals have some means of voicing their concerns about the fairness of the Ombudsman's own investigation.

The current Ombudsman takes a different position from those of previous ombudsmen who would participate in these reviews. It is her understanding that her oath of secrecy under the Ombudsman Act prohibits her from discussing the handling of particular complaints with the committee.

Recognizing the importance of a cooperative approach with the Ombudsman's office in addressing these complaints, the Ombudsman committee in 1993 formally recommended that the committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular case.

From my reading of the New South Wales legislation, it seems to me that recommendation-denied cases are one area where your Ombudsman committee differs from ours and that those cases do not go to your committee, also that your committee has never had any responsibility when it comes to reviewing complaints from the public regarding the service provided by the Ombudsman's office.

Mr Gaudry: Just commenting on that, that's correct. We do look at process, though. If there is delay, if we consider that there's a long period of perhaps procedural problems associated with a complaint we may take that up with the Ombudsman but not the individual complaint itself.

Mr Fraser: That's done on more of a general meeting basis rather than on an individual case. To me, from what you're saying, you are almost the Ombudsman's Ombudsman, this committee, where we don't have that role. We get a lot of complaints to the committee where the Ombudsman has denied a case or they don't like the decision the Ombudsman has made, but we just refuse to handle those because it really —

Mr Gaudry: It's outside the brief.

Mr Fraser: It is outside our brief, but to me it would be very time-consuming. Just on that, do you actually take evidence on those cases, when you review them, on the recommendation denied or do you just review the case as the Ombudsman presents it to you? How does the committee review that?

Mr Kaye: As I mentioned, no recommendation-denied cases have come to the committee in the past few years, so I don't have any personal experience in terms of the procedure followed by the committee. Witnesses are heard. But I don't believe that the person who has made the complaint to the Ombudsman appears before the committee; it's simply hearing from the governmental organization concerned and from the Ombudsman's office.

1050

**Mr Fraser:** Are those cases held in camera or are they public hearings?

Mr Kaye: The name of the person who has complained is kept confidential, but I believe the meetings are conducted in public.

Mr Gaudry: Just returning to the issue of a complaint coming in about the handling of a matter by the Ombudsman, not the matter itself but the process: How is that

addressed by the committee, the timeliness of response, the mechanism by which an Ombudsman's office had dealt with a member of the public, whether or not there are proper procedures within the Office of the Ombudsman to do certain functions, which are issues that we might take up?

Mr Kaye: That was a function the committee hasn't performed in recent years, so again I cannot speak from personal experience, but I believe, as with the recommendation-denied cases, that there would be witnesses from the Ombudsman's office who would appear before the subcommittee. Those meetings would be in private.

The Chair: I'm just wondering if you can take a minute and wrap up your comments. There are just a few more comments here, then we'll open it up to general discussion.

Mr Kaye: The last thing I wanted to mention about the mandate of the committee was that in 1992-93 the committee conducted a comprehensive review of the Office of the Ombudsman. The review focused on the relationship between the Ombudsman and the Legislature which included, among other things, the committee's role regarding the management of the Ombudsman's office, the making of rules for the guidance of the Ombudsman, the examination of recommendation-denied cases and the handling of complaints from the public concerning investigations by the Ombudsman.

Some of the recommendations in the committee's report would have expanded the committee's mandate. For instance, they would have restored the review of estimates by the committee, given the committee a role in the appointment of the Ombudsman and authorized the committee to monitor and review the Ombudsman's exercise of his or her functions, a function explicitly within the terms of reference of the Ombudsman committee of New South Wales. In December last year the House referred this report from 1993 to the current committee for review.

The Chair: Philip, thank you very much. The challenge that falls on me as Chairman now is to encourage a two-way dialogue, which I think we would all like, but that's not the tradition of the process here, you appreciate. We'll do our best with that. I'll try to stick generally to the typical rotation but I don't intend to be bound by that. Let me just see if there are any questions or comments from the government side.

Mr Tom Froese (St Catharines-Brock): Thanks for coming all this way. I was just talking to my colleague Gary Stewart to find out if you guys were coming off your winter or going into your spring.

Mr Gaudry: It's spring. In my home town it's 33 degrees today.

**Mr Froese:** From the coldness in the room here you appreciate that we're going into our winter. We must have the air-conditioning still working or something.

With respect to the brochure we got, the blue form here, and primarily the roles and functions, the first statement says that the Ombudsman Act of 1974 was amended in 1990. Was that to provide for the establishment of the joint committee or did the role and functions of the Ombudsman that you state here, to review and monitor the Ombudsman's office and so on and so forth,

change? Was there a minor change, or what actually happened in 1990?

Mr Gaudry: The committee was created in 1990. Prior to 1990 there was not an oversight committee, so the joint committee was created at that stage.

Ms Minnican: It's a particular part of the Ombudsman Act now, and there were a couple of other minor amendments that came through at the same time but nothing that substantially affected the Ombudsman's jurisdiction.

Mr Froese: So there was really no committee in government or anything to do anything like that. You might have touched on it in your comments before, but why was there a need, what was the reason, other than complaints about the police, for establishing — from what you've stated and what we've got here, you really have a lot of power and control of the Ombudsman. You can virtually do and recommend anything you want, as I understand it. My view is that we don't have that here with our committee with respect to the Ombudsman. For what reason was the committee established?

Mr Fraser: I think the main reason was to ensure that the Ombudsman was doing the job that was intended in the first place, that the committee could oversight the act itself and make recommendations. There are often recommendations put forward that the Parliament or the government at the time won't accept. A lot of those, as I said before, had to do with money. For more access and more awareness in the region of New South Wales you need money, and quite often premiers and treasurers, especially treasury, are not very receptive to the idea of spending more money.

The whole idea of the committee itself, as far as I was concerned, was that it was created just to oversight the role of the Ombudsman, to oversight the legislation and to make sure the legislation stayed up to date with the needs of the community with regard to the role of the Ombudsman. So it was just an oversight area and it also gives, I believe, that special link between the Ombudsman, the community and the Parliament so that the Parliament is not too distant and the Parliament is not just acting on recommendations by the Ombudsman to the ministry, because you could have a lopsided recommendation. In this way it's a filtering process, I suppose.

Mr Gaudry: Ms Minnican has some historic com-

Ms Minnican: One of the major catalysts for the amendments was a report by the then Ombudsman Mr Landa, in which he advocated the establishment of the committee. The model he used was largely the New Zealand officers of Parliament committee, and certain of his recommendations weren't picked up by Parliament in the bill. He specifically wanted us to look at his estimates and to recommend funding and also to recommend the appointment of the Ombudsman. Those are the two major functions that weren't adopted by Parliament. Everything else was fairly much implemented.

Mr Gaudry: There always appears to me to be somewhat of a dilemma in being a committee oversighting the Ombudsman in that the Ombudsman often appears to the committee seeking a friend, I would think, whereas the committee has the oversight role, so there's somewhat of a collision between those two areas of interest. Once

again it's that link between Parliament and the Ombudsman which is important, rather than the Ombudsman having just executive government having a view of what the Ombudsman ought to be doing.

Mr Gilles E. Morin (Carleton East): I have a series of questions. I think perhaps it will stir more discussion. You meet every six months with the Ombudsman?

Mr Gaudry: Yes. There's nothing in the act or in any standing orders that determines that meeting. It's a meeting that the committee has generated and it's an accepted meeting, both in terms of the ICAC and the Ombudsman's committee, as a mechanism for fleshing out concerns the committee has and obviously giving the Ombudsman the opportunity also to put on record concerns that the Ombudsman has.

Mr Morin: Does the Ombudsman make any effort to meet each member of Parliament on a personal basis; for instance, to explain the role and function of the Ombudsman? When you have a new Parliament elected, does the Ombudsman make any effort to more or less explain what is the role and function of the Ombudsman, or how does the MPP or the member of Parliament obtain the information about what is the role and function of the Ombudsman?

Mr Fraser: I think it's a duty of the MP to know what the Ombudsman does. The system in Britain, we noticed, was one whereby referrals to the Ombudsman can only be made through an MP. In Australia, I believe as an MP, we are like Ombudsmen. You get to a stage with a lot of cases where you can't resolve it successfully as an MP. You may consider there is some maladministration or something that needs to be referred and adjudicated. Quite often I'll recommend one of my constituents to take a particular issue to the Ombudsman. So it's a matter of knowing as part of your duty as an MP what the functions are

We get on very well with our Ombudsman. Bryce, I'm not sure, were you on the committee when we appointed this current Ombudsman?

Mr Gaudry: No.

Mr Fraser: She is very accessible. There are no problems. I think any committee member who phoned her wouldn't have a problem with actually just ringing her up and saying: "I want to come down and have a look. I want to talk to you about certain matters." The committee itself, when we have our general meetings, gives her questions on notice.

Bryce and I, during this trip, have been sitting down and making notes for questions we would like a response to. When we have that general meeting she then responds to the questions we've given on notice and that then creates discussion. There may be something out of an answer she has given that may lead to more questioning in that particular area, and at the end of it she may come up with a recommendation, or we may, for a change, either in her operation or it's a discussion — it's fairly open — or it's a legislative change.

Mr Gaudry: Just picking up on that, talking about the Ombudsman in Great Britain, Sir William Reid appeared from discussions that we had with his officers to be very much in constant contact with the MPs, visiting the

Parliament House on a weekly basis and obviously much more in personal contact. That isn't the case. There are information packages on the operation of the office. All members in their electorate offices would have information to assist the public in linking to the Ombudsman, and as Andrew has said certainly committee members and, I'm sure, any member of Parliament who wishes to have direct access to speak to the Ombudsman would have no difficulties at all, but it isn't that more proactive model that obviously the British Ombudsman follows.

Mr Morin: What is interesting in England of course with the parliamentary commissioner system is that the member of Parliament is more directly involved, and when the case becomes too complicated or he doesn't have the resource it takes to pursue the case, then it passes on to the parliamentary commissioner. I found that with that system it cuts the bureaucracy.

One of the problems we have here in Ontario, like many other offices across the world, I think, is that once the bureaucracy gets involved, it takes an eternity to solve a problem, to solve a case. How many members are there in the office in Australia, in New South Wales, how many members in the Ombudsman's office?

Mr Gaudry: There are 72 members. I've got some statistics here which may be useful to the committee. Since 1974, the Ombudsman's office has dealt with 95,000 formal complaints and about 100,000 informal. In 1994-95, which is the last report, the Ombudsman dealt with 7,636 formal written complaints, and as I said before, 5,000 of those were complaints relating to the police and 2,580 in other areas of jurisdiction. There's been an annual increase in complaints of 7% to 10%. Those complaints obviously are written complaints that can be assisted in being provided as written complaints, of course, but they're not necessarily complaints that come via a member of Parliament. In fact, as Andrew said, the member of Parliament often would find that they become the complainant by that process and it can lead to a very complicated system rather than a direct complaint.

Mr Fraser: One of the things in that regard, as far as I'm concerned, is that under our system, if someone came to my electorate and said they had a problem with a government department and I then referred it on their behalf to the Ombudsman, I become the complainant. I like the British system from what I've seen of it, but I don't like the idea in Australia where you are assisting a constituent and you actually own the complaint. I would like to be able to refer cases on some people's behalf. Sometimes I do, but it creates an extra workload for myself. The cases I refer are normally in a situation whereby the person complaining has very poor literacy skills or may be absolutely frightened of any area of bureaucracy, so you tender it on their behalf. But it does create a problem. It means the member — I personally, I know, avoid that as much as I can purely because of the fact you then own the complaint.

If we had a system whereby you could automatically refer it, and we noticed in Britain in our discussions there that while the MP puts the complaint in, the Ombudsman or the parliamentary commissioner is now communicating directly with the complainant and copying it back to the

member of Parliament, so the workload is eased a little bit from the member. That appears to me to be quite good. That way you're informed of the complaint, you're kept informed of how it's progressing as to whether there is a positive or negative result out of it, and on that basis you can then probably take action via the ministerial offices as a member to ensure, or try to, that whatever the complaint is, it doesn't happen again.

Mr Morin: In Ontario we have offices of ombudsmen in other locations across the province. You're dealing with an area of 412,000 square miles. It's big, huge. Do you have the same system in Australia where you have

offices in different parts of -

Mr Fraser: No. What we do have, which is interesting — in my electorate we're 600 or 700 kilometres from Sydney, where the Ombudsman's located, but we have a lot of neighbourhood centres which are run in conjunction with local government, but they also tend to provide information to people who may have problems accessing that information.

You would find in just about every one of those neighbourhood centres that there are brochures from the Ombudsman. All government departments really are required to provide that information and MPs' offices do provide that information. The information is very easily accessible. They also have a toll-free telephone number back to the Ombudsman in Sydney. If someone wishes to make a complaint or wishes to know how to go about making a complaint outside the local member of Parliament, they can do it.

As part of our access and awareness report, previously with the Ombudsman we suggested that verbal complaints should be handled. Especially in Sydney the awareness and access is one of multiculturalism where people don't understand. They are not fully conversant in the English language and we're looking at ways the Ombudsman will accept those complaints by way of telephone and then send an officer out to enable them to formalize their complaint. The access is there and it is getting better, but as I said, it's one of my interests, being a non-metropolitan member, to ensure that access is improved the whole time.

Mr Gaudry: Just in terms of the access issue as well, the Ombudsman was making more visits to regional New South Wales, but once again in terms of funds and resources there's been a constriction of those visits. In fact, as Andrew said, we're generating one to Coffs Harbour both as a mechanism of increasing the community's awareness of our role, as well as giving the Ombudsman a further opportunity to have contact with people in that regional centre.

Just in terms of resources, and I don't know how it equates with the resources here, the budget for the Ombudsman in 1994-95 was \$4.4 million and that's to cover the staff of 72 and the total operation of the office, so it's obviously a big task with a limited budget.

Mr Morin: We started the budget in 1975 with \$1.5 million; it's now \$7.5 million. So you have hearings occasionally across the nation to listen to complaints or grievances from citizens, or you don't do that?

Mr Gaudry: We don't. This visit to Coffs Harbour is an opportunity for us to give the public a better under-

standing of our role, but one of the things we don't wish to do, I would think, as a committee is to become an appeal body in the mind of the public and we'd have to be careful that did not occur.

1110

Mr Fraser: We're going to have to be careful when we have this meeting that we emphasize that we are there on the basis of a legislative committee rather than the Ombudsman. The Ombudsman does get into regional New South Wales. I recently had the Ombudsman up into my electorate, within the last six months. We have deputy ombudsmen with specialized interests. Oftentimes they will go into a particular area because of the type of complaint. We have a deputy Ombudsman, a local government one, a deputy Ombudsman, police. What else do we have?

Ms Minnican: There's a deputy Ombudsman and then two assistant ombudsmen. The office is split up into two areas, the police area, and then the general area which covers corrective services, prisons, local government and other departments. So you've got an assistant for each of those areas.

Mr Morin: I'm sorry to take so much time. I'm keenly interested. I notice that you have 99 members of the assembly and the idea when we first created the Ombudsman was to have the same number of employees as we had members of Parliament. At that time we had 125 members of Parliament, so therefore we had 125 staff. That was criticized of course because of the cost. I don't know how many members there are today, how many staff there are. Maybe it's 130. That was the idea Mr Maloney had at that time, "Let's have the same amount." One of the main criticisms was the question of budget. I don't know if it's the same with you, but I'd like to hear your comments on that.

Mr Gaudry: As was said earlier, the funds and resources inquiry that the parliamentary committee undertook was to look at that issue. We're in a situation in Australia, in New South Wales, and probably at every local government level of doing more with less and the same applies to any government department or authority.

I'm sure that right from the inception it wasn't set up with the idea of giving one staff member for every member of Parliament; rather to tie it to the level of activity the Ombudsman's office undertakes and to look at perhaps better use of technology in terms of the operations of the office. I certainly know that since that funds and resources inquiry the management systems within the office were restructured and there's also more use of electronic recordkeeping and transfer of information. It really is more looking at those aspects in terms of resourcing.

Mr Rosario Marchese (Fort York): I was interested in the figure of 70% of all cases dealing with complaints against the police and wondered about the evolution of that. Why is it focused almost entirely on that? Secondly, why aren't you getting an excessive number of complaints coming forth from the various ministries to which the government is attached?

Mr Fraser: The ministers would have you believe that their departments are that good no one would need to complain. There's been somewhat of a revolution in New South Wales and Australia the last number of years, starting with the Fitzgerald inquiry into police in Queensland, where people are more aware of their rights and the actions of police, and then the royal commission in New South Wales. Prior to the royal commission, as part of the awareness that was going on, there were a lot of complaints generated by people back to the Ombudsman with regard to the police, be they corrupt behaviour or just the way people perceived the services they were receiving from the police in certain areas.

I think what will happen now, because of the Police Integrity Commissioner which has come out of the royal commission into police corruption, is that those numbers will reduce because a lot of the areas of corrupt conduct will be handled by the Police Integrity Commission. That imbalance will disappear, but my attitude is that the large number of police complaints came out of the fact that there was an awareness within the media, and therefore the public, that there were corrupt or unlawful practices or just incorrect practices by police.

Mr Gaudry: Just on that as well, we have several bodies operating in terms of oversight: the ICAC, which is looking specifically at corruption. So issues of corruption within all of the public authorities go to that area, the maladministration to the Ombudsman, and of course the serious and substantial waste, those aspects would go to the Auditor General.

There's also the issue under the new Police Integrity Commission that there will be a range of corruption and serious issues dealt with apart from the Ombudsman's office, but they will still cover the ordinary bread-and-butter, if I can put it that way, complaints against police, and there are a substantial number of those. In fact, if you break that 70% up into class and kind, a lot of the complaints are about the day-to-day contact between the public and the police service.

But in terms of why the Ombudsman is concentrating so much on the police, just looking at our history, in 1978 the Police Regulation (Allegations of Misconduct) Act gave the Ombudsman a very limited role regarding internal investigations of complaints. Then in 1984 the Ombudsman was given power to reinvestigate complaints against police — that broadened — and in 1993 a further broadening of the power of the Ombudsman. So it's gradually developed more and more into a police complaints handling body.

I think as Andrew said and perhaps as I said at the beginning, people might think we've got an obsession in New South Wales concerning corruption, and in particular corruption within the police service, but it's a genesis that's probably occurred in a lot of areas.

Mr Marchese: You mentioned you have a problem of access in terms of some of the people outside of the cities having knowledge of what the Ombudsman does or its powers or how you are able to reach that person for a complaint. Obviously that's a challenge for you in terms of how you reach them and letting them know of their rights to be able to deal with a particular problem. How are you dealing with that?

Mr Fraser: The Ombudsman, as I said, came to Coffs Harbour not long ago, or representatives of the Ombudsman's office came, and I was extremely impressed with

the way she handled it, because there was advance media notification right across my electorate that the Ombudsman was coming. It meant that the media area which we cover, which is fairly large — it's pretty well the whole from Taree to the border, which is two thirds of the north coast, and my understanding on the result of that was that a lot of complaints came, or a lot of people from out of my electorate but in the southern district, from Nambucca and Kempsey, which is only a matter of 60 miles or 100 kilometres for them to come, came up and saw the Ombudsman.

So she has been very proactive in that particular sense, which is good, and I think in a lot of small communities, once the Ombudsman has been there and has been seen to be doing something, the opportunity for other people then to access it becomes greater because of word of mouth.

Mr Gaudry: Following upon the committee's last report, the Ombudsman did develop an access and awareness plan, which she is pursuing. As well as that, if a complainant goes to the police, they are tasked to advise them of the role of the Ombudsman in the investigation of police complaints as well. If we take that and if we also take the role of the ICAC and the fact that both of those bodies have got a proactive education and awareness program, more and more people are aware of those avenues in terms of dealing with complaints.

As well as that I guess the issue is that there is a systemic impact in terms of an awareness of probity in government, if I can put it that way, and people are perhaps quick to say, "I'll report that to the Ombudsman," or "The ICAC will hear about this." So that's perhaps part of the whole process of awareness that's grown.

1120

Mr Marchese: Right. The last one is an interesting point in terms of how we deal with individual complaints versus systemic. In a way, they're very much interrelated. As you do that work across the whole of the state, it becomes in itself a systemic way of dealing with problems. I find that interesting.

Mr Gaudry: In terms of our recent protected disclosures review, we've made very strong recommendations that, firstly, a body be centralized within the office of the Ombudsman to give the public a first point of call and advice, and secondly that within the senior executive service of government departments, a part of their contract be that they set up proper systems within their departments to support protected disclosures. So it's a development of an understanding of a code of conduct both in terms of behaviour and also protection of those people who are making disclosures. Gradually the public sector is being educated, I suppose, about the role of all of the investigative authorities.

Mr Fraser: I think the one that had the major impact in New South Wales was the ICAC, the Independent Commission Against Corruption, which was set up in 1989. It took on itself a lot of corrupt conduct within, or reported corrupt conduct within, government and within government departments.

It became very public, and it's basically got to a stage now where it becomes a threat. People will say, "I'll take that to ICAC," or "That is ICACable." Because of that process, people are aware of maladministration or corruption within government departments, and when the statement is made, normally someone will say, "The Ombudsman's there," or "You should take it here." Often I'll find myself saying it. People will say, "Look, I want this fellow reported to ICAC," and I'll say, "Well, you can do it, but I think the sensible way to go would be along this path." A lot of the time it is the Ombudsman where it should go. So that process really gave the public awareness that they do have a right of appeal to a statutory authority of some sort.

Mr R. Gary Stewart (Peterborough): Welcome and g'day to you.

Mr Fraser: G'day, mate.

Mr Stewart: We keep saying "eh," so you can take that back there.

Mr Gaudry: You must be from Queensland.

**Mr Stewart:** I spent a little time down there. It was most enjoyable.

Going back to how your committee does not have any function as an appeal body, if you are not pleased with a decision that has been made by the Ombudsman, where does it go from there?

Mr Fraser: We tend not even to involve ourselves. Our ambit is not one of individual appeals, and it's one that I would really dread, if we ever came into that area. We do have some people who are somewhat zealous in their particular causes and have gone to the Ombudsman and the Ombudsman said no, and then we get reams of letters from them saying, "This is wrong." You end up reading the correspondence purely out of the fact that it may be amusing. It may be something that you look at and you find it's almost vexatious in its application. We just write back and say, "Sorry, we do not have the authority or the power to take that on."

To a large extent, I wouldn't like that power within the committee because I think you'd find yourself — one of the things I wrote down here when you mentioned you have that recommendation-denied service here is, how long does it take? I can see the committee sitting forever on some of these cases where people just would refuse to accept that recommendation denied.

What happens? What did you say, 73% of cases you support? Who becomes the appeal body after that as far as you're concerned? I think it's very brave of you to have that particular facility within the committee.

Mr Gaudry: Let's just say, though, we're looking at process and the procedures of the office. We've had several complaints to us in terms of delay. In that situation, we would write to the Ombudsman covering the letter that we may have received from the constituent, expressing our concern and seeking a report from the Ombudsman either in writing or in terms of taking up the general issue at their general meeting, and therefore impacting on the office of the Ombudsman in that way to sharpen up procedures, to deal in a more timely fashion with complaints. That's certainly something that will be arising at the next general meeting with the Ombudsman, but we would not be seeking appeal or direct intervention in the individual case.

Mr Stewart: The Ombudsman then is the final decision-maker for this.

Mr Gaudry: Yes.

Mr Stewart: So there is no recourse after that?

Mr Gaudry: No.

Mr Stewart: That's it. It's final.

Ms Minnican: The only judicial appeal that can be exercised in relation to the Ombudsman's functions is an appeal to the courts regarding the exercise of the jurisdiction. We've had a couple of cases in relation to police matters where the police commissioner took legal action, saying, "We think the Ombudsman is acting outside jurisdiction." None of those has ever been upheld. That's the only kind of action you can take.

Mr Gaudry: Local government councils have at times taken the Ombudsman before the court, and as Helen has stated, to date the Ombudsman has a strikeout rate of

100%.

Mr Stewart: Do you feel that because your committee was the commissioners regarding police corruption and it was because you had about 5,000 complaints etc, your committee will become a committee that will form other commissions to look at other things within the country? I am interested. The one big one you've had is the police corruption, and I assume that was because of complaints, but what does your committee do after that? You've done that. Where do you go from there?

Mr Gaudry: I don't think there is any chance that the committee will forfeit a role, because the issue of dealing with the Police Integrity Commission will be certainly ongoing, but just in terms of the way that royal commission was set up, it did not come in any way from the

Ombudsman's committee.

During the last term of the Parliament, we had a finely balanced Parliament. The balance of power was held by three independents, and those independents entered into a compact of reform with the then Liberal-National state government. There were many reforms made within the parliamentary process, but also one of those independents, Mr John Hatton, had had a 20-year campaign concerning corruption within the police force.

It was within that context that he obtained the support of the opposition to set up a royal commission into the police service, and that royal commission has now sat for about 18 months. Following upon its interim report, the Parliament enacted the Police Integrity Commission Act to set up a permanent body to take over from the royal commission, which of course has been a very incisive investigation into corruption, but obviously it's not going to be a permanent royal commission from the terms of cost, of course, and so this body has been set up following that.

Our committee then has been given the oversight role, the same as we have with the Ombudsman. Once again, because these bodies are independent of executive government and have enormous power in terms of compulsion, in terms of the capacity to wiretap, to issue warrants and to seek entry and to take all records, there has to be some line of responsibility and accountability, and the parliamentary committee performs that function.

So we will have an oversight role, and I think quite an important one.

Mr Stewart: Long-term.
Mr Gaudry: In the long term.

Mr Fraser: You see, in both cases the Ombudsman's role is an evolving role and will continue to be so, and more specifically and especially the Police Integrity Commission. It'll give this committee the opportunity to watch its actions, to look at whether there is a need for legislative change with regard to the way they operate in both the Ombudsman and the Police Integrity Commission. That role is always there and the committee will be the watchdog in that regard to probably ensure that both those areas are matching public expectations.

1130

Mr Gaudry: I wonder if I might ask a question at the moment. It intrigues me, as Andrew has said, about the recommendation-denied reports. You said that a great degree — 72% — were supported and that there are some areas where government obviously does not accept the view of the Ombudsman. Does the committee have any role in that or does it then get into an area which is obviously political and perhaps a difficult issue for the committee?

The Chair: I'll just begin with the response that you appreciate that the members of this committee have not been involved with that process — it hasn't occurred for a while — but the institutional memory of this committee resides in Mr Kaye. I'll invite him to respond.

Mr Kaye: I should qualify as well that my involvement with the committee is limited to one year. One of the concerns of the previous Ombudsman committee was the role of the Ombudsman once a recommendation-denied case had been presented to the assembly and referred to the committee, and the committee had conducted hearings where the committee would hear from representatives of the Ombudsman's office and from the governmental organization concerned. Let's say you have a situation where the committee has come up with a recommendation in support of the Ombudsman. What happens at that stage?

Previous ombudsmen used to include in their annual reports what were known as recommendation-denied tables, which in one column would list the recommendation of the Ombudsman and in the next column the recommendation of the Ombudsman committee and in the third column what action the governmental organization had taken in response to the recommendations of the Ombudsman and the committee. Those tables would appear in each annual report and a case would be carried forward from one report to another until it had been resolved. That was one way in which the committee was able to monitor what was happening to its recommendations

The current Ombudsman feels that once she has submitted a recommendation-denied case to the assembly it's for the assembly and the committee to then continue with it and that it is not her responsibility to include these recommendation-denied tables in the annual report. So they are no longer included and, as I said, as well there just haven't been any recommendation-denied cases referred to this committee in the last few years.

Mr Fraser: Do you feel that the reason there are no recommendation-denied cases is that the committee has

the power to oversee those and therefore the Ombudsman would be less inclined to deny, or not?

Mr Kaye: You're asking why there have been fewer recommendation-denied cases? I should say that the Ombudsman had said that her ability to bring a recommendation-denied case before this committee is very valued because of the publicity generated and the political pressure that can be generated on the governmental organization to implement her recommendations.

As to why there have been fewer recommendationdenied cases in the last few years, that was a question the previous committee faced when it conducted an overall review of the Ombudsman's office and really wasn't able to reach a definitive answer. It made a recommendation that where the Ombudsman has made a formal recommendation to a governmental organization, information about that recommendation should be included in the annual report of the Ombudsman along with any corrective action the governmental organization has taken in response, so that the committee can have a better sense as to what kind of recommendations, how many formal recommendations have been made and what the response of the governmental organization has been, to better understand why cases in the last few years have not reached the recommendation-denied stage.

It is a question which the previous committee felt it could speculate on but could not reach any definitive answers on. So in the report there was this recommendation pertaining to what the Ombudsman should include additionally in the annual report. It was modelled on the requirement in Quebec regarding their Ombudsman and what goes into his or her annual report.

Mr Pat Hoy (Essex-Kent): I have a question regarding the budget of the Ombudsman. You stated that it was about \$4.5 million in the past budgetary findings. Are there any controls on the budget of the Ombudsman? How will you deal with the budget next year, for example? Is it a stated amount allocated? Is it openended?

Mr Fraser: All government departments, whether the Ombudsman or the Department of Conservation and Land Management, will apply to Treasury via their ministries for budget allocations. At the end of the day Treasury allocates budgets, and all statutory offices argue their budgets back through the process of ministry and Treasury. It's probably one of history and one of where the office will go in the next 12 months or whatever. I think it's historical in Australian politics, whether in New South Wales or any other state, or federally, that no government department ever sees a reduction in budgets unless it's forced on them. You'll find that they'll fight to keep their budgets, no matter what. But the Ombudsman's area does increase as more awareness becomes available, but it's up to the Ombudsman to argue that case back through the relevant ministry and the Treasury in order that an allocation is made.

Mr Gaudry: The Ombudsman actually comes under the Premier in New South Wales, so the Premier obviously has a strong view in terms of the present direction against corruption. The funds and resources inquiry by the committee is obviously put into the Parliament, some very strong and persuasive arguments in terms of improving funding for access and awareness. Therefore, there has been an improvement. The process by which that decision was made, though, would have been once again, as Andrew said, through the budgetary process within departments. We have, you'd say, coming from the side an influence, I'm sure, in terms of funding for the Ombudsman's office, but we certainly don't determine it.

Mr Fraser: Also, Treasury officials are the greatest enemy of any minister or department. They would monitor any increases as to performance criteria and increased result from the Ombudsman. If the Ombudsman wasn't demonstrating that the budget was needed, there'd be a fair amount of pressure by the Premier's department to reduce the budget, but I don't think it would be something that would happen.

Mr W. Leo Jordan (Lanark-Renfrew): Welcome to our committee this morning. I appreciate your taking time to be with us. My son and his wife just spent a year a short time ago in Sydney on a teacher exchange and enjoyed it very much.

The point that comes to mind that has been partly explained here just previously is that you had gone for 15 years without a committee, I understand.

Mr Gaudry: From 1974 to 1990, yes.

Mr Jordan: We are pretty much in the reverse. We have had a committee for about that period of time and we're at the point where we wonder, for what purpose? This committee is starting to look like another form of bureaucracy around the Ombudsman, because we don't really have any great teeth, if you will, to direct or assess decisions made by the Ombudsman. As you say, the Ombudsman is appointed by the Premier and, as far as I'm concerned, seems to be answerable to the Premier. This committee has very little input as to the amount to budget for that or the decisions made by the Ombudsman. In fact, as was pointed out, the previous committee, which I was on, was seriously considering the need to continue this committee. I would just ask you for your comments.

1140

Mr Fraser: Yes, that can happen. You can get to a stage with any committee, especially a committee of the Parliament, where your role is no longer being fulfilled. But at the same time, if a committee is there, even if it only meets semiregularly, the fact that it is there to oversight the process, and possibly the legislative process, as far as we're concerned, is something that gives the opportunity for appeal from the Ombudsman.

Our last Ombudsman, Mr Landa, was very interested in areas of freedom of information and things such as that, and he would put reports out that the committee would consider. He would come to the committee in the general meetings and he would tell us what he would like the government to do and we'd ignore it — not necessarily. The opportunity in our committee is one of evolution. You can do that. With your committee, possibly the committee might need further powers; I don't know.

Mr Gaudry: You said that the Ombudsman was answerable to the Premier. There's a fairly robust situation in New South Wales at times between those investigative authorities and the government in power. If we take the ICAC, for instance, the ICAC was set up by the

former Liberal-National government. Many of its first actions were actually directed against ministers within that government. In fact, eventually the Premier appeared before the ICAC and subsequently resigned.

The Auditor General at the moment has a very robust relationship with government and often makes comments which ruffle the feathers of ministers and the Treasurer. The Ombudsman also can take a very strong role, although it appears much more a cooperative role. The committee forms a linkage between the Ombudsman and government or, particularly, between departments so that we have a role there as well.

You're saying obviously that perhaps you're in a mature stage of the relationship.

Mr Jordan: It would appear to be. I'm not talking about myself.

I was wondering too — and perhaps, Mr Chairman, you could give me an explanation — whether the fact that this committee was not part of the act in the beginning — I don't think the act refers to a standing committee. I think that was something that was created by the Legislative Assembly afterwards, after the appointment of the Ombudsman and the act. So in the beginning the Premier appointed the Ombudsman, whoever it was. It was Mr Maloney, was it not, the first one? From there the Legislative Assembly decided that perhaps there was a need for a standing committee to assess. It would seem the need in Australia seemed to be a problem with the police.

Mr Gaudry: No, no.

Mr Jordan: Seventy per cent of your requests came from that area.

Mr Gaudry: Yes, but the issue really is more that there is a — "mediation" is the wrong word — place of review between executive government and the authority itself, and both an oversight and recommendation role which I think has been very valuable. As Andrew has said, the role of the Ombudsman and the role of ICAC is to a degree an organic thing. It isn't set in concrete. We perform quite an important function there.

Mr Jordan: I think as Mr Morin has pointed out, we've gone from \$1.5 million to \$7.5 million in expenditures

Mr Morin: Let me just add to what Mr Jordan is saying. If my memory doesn't fail me, I recall quite well that it was at the instigation of Mr Maloney that the select committee on the Ombudsman be formed. Here's the reason: The Ombudsman answers to the Legislature; the Ombudsman is an extension of the Legislature. The Ombudsman was not to come in the House and give his report to the Parliament; he came and met with the committee, who in turn would pass on the information to the Parliament, which makes sense.

You made the suggestion to have the Ombudsman answer to the Premier. The Ombudsman has to be totally apolitical. The Ombudsman cannot be a tool of the government in power. The Ombudsman is a tool of the Legislature, and that's the purpose of it all, to make sure there is a voice, there is someone listening to the little guy who cannot fend for himself; also to prevent high costs. Just think of the system before. If you had a

grievance against the government, you had to go to court, and many people couldn't afford to do it. Now we have an Ombudsman who can do that. That means that anyone can go to the Ombudsman. If he feels aggrieved by the administration of the government, he can go there.

When you think of the system, it's an excellent system, but to change it — I think your implication, the fact that you're there listening to what the Ombudsman has to say, is extremely important. Can you imagine if the Ombudsman was on his own? Can you imagine, if an agency was on its own, the damage that could be done, the decisions that could be made, the money that could be spent? We're there to make sure that the —

Mr Jordan: Are we, though? How effective is the committee?

Mr Morin: I don't want to start a debate —

Mr Gaudry: Sounds good to me.

Mr Morin: — but I think it is very effective. But at the same time, I think the responsibility of the members of Parliament is to understand how the Ombudsman operates and really create a team. This sometimes, and I've seen this, at the beginning —

Mr Jordan: If I might interrupt there, that is what's happening now. In my constituency office, I'm working as a team with the Ombudsman.

The Chair: I would suggest that we pursue this angle on our own time later.

Mr Jordan: I just was interested in the fact that they went 15 years without the committee. We went with it and now we're at a plateau where some of our committee members are not interested in attending because they see no purpose.

Mr Fraser: Possibly we went the other way and we saw the need, and just the fact that the committee is there sends a very strong message in all directions.

Mr Jordan: It's very expensive.

Mr Gaudry: The committee is expensive?

**Mr Jordan:** In our own case, as pointed out, we went from \$1.5 million to \$7.5 million.

Mr Gaudry: Yes, but that's the office, not the committee.

Mr Jordan: I know, but I mean —

Mr Gaudry: I think the committee system is a very economical system in terms of providing an oversight to the authority and monitoring its actions. Basically, with the committee structure in our Parliament, we have a dedicated project officer and an assistant, but the assistant also assists other committees, and the services of the clerk are shared also, the parliamentary officers. Then of course for the members of the committee, it's part of the normal parliamentary workload. So it is a very inexpensive system of providing, as you've said very well, that mediation in a way between the Legislative Assembly and the council, in our case, and the Ombudsman, who are, after all, responsible to Parliament, not the executive government.

The Chair: I'm going to have to comment that our Legislature just made the operations of this committee a little more efficient by eliminating per diems.

We have 10 minutes left and I have Mr Lalonde and Mr Froese. I want to get them both on.

1150

Mr Jean-Marc Lalonde (Prescott and Russell): Mr Kaye just explained a little while ago the steps that have to be followed before a case is handled by the Ombudsman. I believe in Australia you must have workers' compensation cases also.

Mr Gaudry: Yes.

Mr Lalonde: How does it work over there? After the application is submitted to WCB, as we call it, instead of going to the Workers' Compensation Board if the application is denied, can the people go directly to the Ombudsman or is there an appeal process that has to be followed?

Mr Fraser: It's pretty well a direct legal process.

Mr Lalonde: It's pretty well direct?

Mr Fraser: A direct legal process on the basis of, if compensation is denied to any worker or withdrawn, there is a process through the industrial courts where that person would appeal. So it wouldn't go to the Ombudsman; it would go through a legal process of its own.

Mr Gaudry: In fact, we have a schedule appended to the Ombudsman Act of excluded jurisdictions. It would

be an excluded jurisdiction.

Mr Lalonde: In our case here it has to go through the appeal process, and just lately I was really surprised and satisfied with a position the Ombudsman has taken. Within a week after taking the case to the Ombudsman, they found out that the last appeal had not been gone through. They have an appeal to the last or the third step, and immediately the response came within a week that the appeal process has to be followed before they take over or handle the case. So in this case I was really pleased with the position the Ombudsman has taken, the time they have taken, within a week.

Mr Gaudry: You've got a different brief, your Ombudsman, than ours.

Mr Lalonde: There are quite a few cases of WCB that are going through the Ombudsman in the province.

Mr Gaudry: In our state at the moment, the issue of what we call work cover, workers' compensation issues, is quite — they're on the agenda certainly of most members of Parliament.

Interiection.

Mr Lalonde: Which in other words could be very costly for the person applying to get the compensation

who has been denied the compensation.

Mr Fraser: A lot of the areas of conflict within workers' compensation in New South Wales are areas of common law, which is negligence rather than the compensation itself. The compensation structure in New South Wales is fairly good, but there are areas — I have a fellow at the moment who has a major injury, and his award only allows him 26 weeks' compensation. He's employed by his own company; he's paid in hundreds of thousands of dollars over the years. He's somewhat upset. But once again, it's outside of that jurisdiction of the Ombudsman. It goes back to industrial awards that are negotiated via employers and unions to a large extent.

Mr Froese: Comments were made before about, what does our committee really do? If our committee had the power and jurisdiction that you've got, especially as documented in your roles and functions, I don't think our committee would have a problem with it. I think we're really struggling with — I hate the terminology of "cases denied" or whatever it was. Why don't you just tell if they're solved or not solved, what the problem is? But I think one of the reasons the committee dealt with it, to my understanding, and I could be wrong, was because this committee doesn't have a role. If we had the role to monitor, review and exercise and to draw matters to the attention of the Legislative Assembly or change the functions or the structure as you have, I think this committee could live well within those realms.

When I found out that we were dealing with specific cases, I totally agree with the way your system is. Why are we getting involved? The Ombudsman is the final one. Documentation states that if the case isn't being dealt with or is delayed, then you get involved as well.

It's to get an answer, whatever that answer is.

Mr Gaudry: It's more to insist that there be procedures in place to deal in a timely manner with any complaint, rather than that individual complaint. The individual complaint to us highlights the difficulty in a procedural sense that must be within the Office of the Ombudsman or it highlights the inadequacy of perhaps some of the offices operating within the Ombudsman's area. Therefore we would be questioning about the processes and the procedures, not the individual case.

Mr Froese: I guess the comments I made were more of a statement than anything else, but do you feel that a particular Ombudsman, a particular individual and personality, has a lot to do with the level of cooperation and taking the jurisdiction or the act and pushing it one way or the other, that it depends largely on the personality of the individual, and how they interpret the act determines if the Ombudsman is effective or not effective?

Mr Gaudry: I don't have the range of experience to state that, but I do know, having been on the ICAC committee of the Parliament prior to coming to this committee, that certainly the esprit de corps of the whole office has a lot to do with the Ombudsman or the ICAC commissioner in charge, and obviously they also have their areas of interest as well. So I think it does have a lot of impact. But as Andrew has said, certainly our present commissioner is very, very keen to be proactive and get the office out into the community as much as possible.

**Mr Fraser:** Our present Ombudsman was — what was she? Commissioner for ethnic affairs -

Ms Minnican: No, human rights and then equal

opportunity.

Mr Fraser: — prior to coming to the job, so she has an absolute interest in ensuring access and ensuring awareness of the position because of her previous position, which has brought with it basically a breath of fresh

Ms Minnican: And children's magistrate.

Mr Fraser: Oh, yes, and she was a children's magistrate prior to that.

Mr Gaudry: So that indicates an area of interest.

If I might, I note here in the information supplied there's certainly a massive number of recommendations in terms of the change, perhaps, in the role of the committee. Have they been acted on? Have any of those been acted on?

The Chair: I'm going to invite Philip to respond to that question.

**Mr Kaye:** Are you referring to the recommendations in the 1993 report?

Mr Gaudry: Yes, the 1993 report.

Mr Kaye: That report was tabled but never debated in the House. As I mentioned, in December of last year the House referred the report to this committee for further review and that's where things stand.

Mr Gaudry: But does the committee see that as an area of current activity, or is it something that, as Mr Jordan said, perhaps you're not moving ahead on at the moment?

The Chair: This committee has been examining that report, examining those recommendations, and is in the process of forming a view as to what further steps might be merited.

Mr Froese: That's putting it very diplomatically.

The Chair: It's about 12 o'clock. For that reason only, I suggest it's about time we adjourn. Before doing that, though, I want to extend the gratitude of this committee to Mr Gaudry, Mr Fraser and Ms Minnican for joining us today and sharing with us your thoughts, perspectives and experiences with your service on the Ombudsman committee of New South Wales.

I understand that you'll be joining us this afternoon to catch part of our question period, which should make you feel quite at home. I've always thought it's quite similar to Australian rules football. I'll be interested in your perspective on that.

Mr Gaudry: We have a peculiar name for the Legislative Assembly in New South Wales. It's referred to nationally as the Bear Pit. Really, in width, it's not too much wider than the chamber that we're in at the moment, so you are actually less than two sword lengths from your opposition. There's often a robust exchange.

The Chair: I'm not sure we would survive if we didn't have a little bit more room to work with.

Mr Fraser: It's a very robust chamber. Actually, it's quite funny because a lot of school children come into our chamber and I've often heard the comment, "If we acted like that at school, we'd be disciplined."

**Mr Froese:** So you have the same problem over there as we have here.

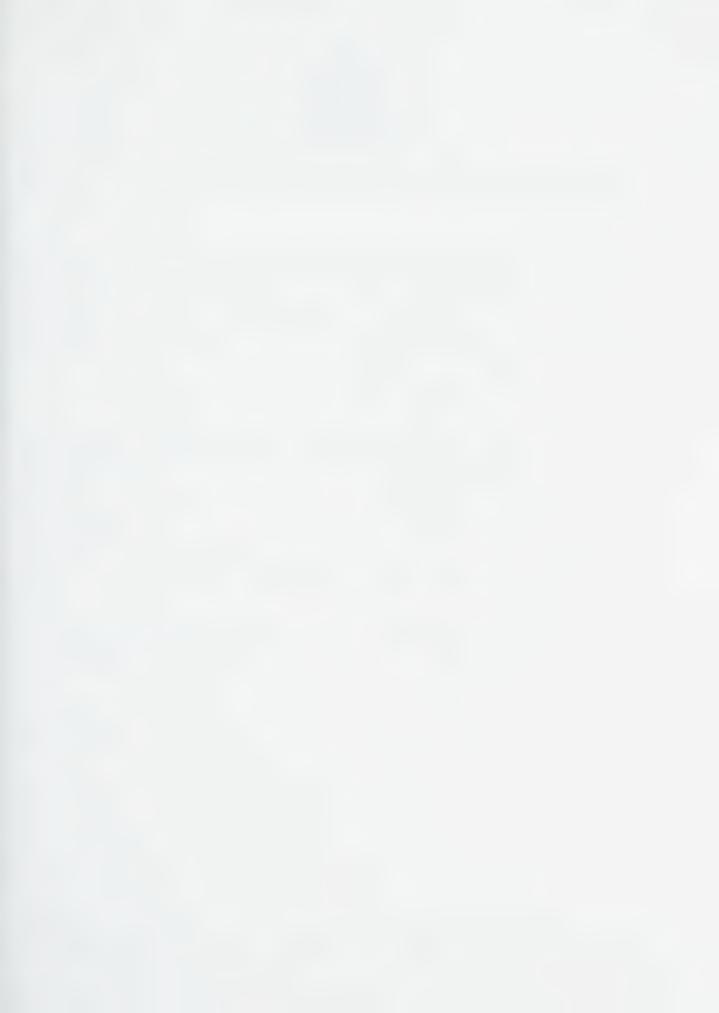
Mr Fraser: I suppose there's a little bit of poetic licence from MPs when they've been locked up in chambers especially. It's a bit like boarding school. You've got to let off steam somehow, so it's a matter of as long as it's done within certain rules and regulations and the Speaker doesn't ask you to retire for a day or two.

The Chair: With those very encouraging remarks, we adjourn the meeting for today.

The committee adjourned at 1200.







#### **CONTENTS**

#### Wednesday 16 October 1996

Visit by New South Wales par Committee on the Office of the Mr Andrew Fraser Mr Bryce Gaudry Ms Helen Minnican	liamentary delegation
STAND	ING COMMITTEE ON THE OMBUDSMAN
	Mr John L. Parker (York East / -Est PC) Mr Tom Froese (St Catharines-Brock PC)
*Mr Carl  *Mrs Barbara  *Mr Tom  *Mr Doug  *Mr Pat  *Mr Leo  *Mr Jean-Marc  *Mr Rosario  *Mrs Margaret  *Mr John L.  Ms Lillian  *Mr R. Gary	Caplan (Oriole L) DeFaria (Mississauga East / -Est PC) Fisher (Bruce PC) Froese (St Catharines-Brock PC) Galt (Northumberland PC) Hoy (Essex-Kent L) Jordan (Lanark-Renfrew PC) Lalonde (Prescott and Russell / Prescott et Russell L) Marchese (Fort York ND) Marland (Mississauga South / -Sud PC) Parker (York East / -Est PC) Ross (Hamilton West / - Ouest PC) Stewart (Peterborough PC) Wood (Cochrane North / -Nord ND)
*In attendance /	
0 1	Autres participants et participantes:  Morin (Carleton East / -Est L)  Mr Todd Decker
Clerk / Greffier:	Mr Todd Decker

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

Publications



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## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 23 October 1996

Standing committee on the Ombudsman

Organization

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Première session, 36e législature

### Journal des débats (Hansard)

Mercredi 23 octobre 1996

Comité permanent de l'ombudsman

Organisation



Chair: John L. Parker Clerk: Lisa Freedman Président : John L. Parker Greffière : Lisa Freedman

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 23 October 1996

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 23 octobre 1996

The committee met at 1037 in room 151, following a closed session.

#### **ORGANIZATION**

The Chair (Mr John L. Parker): I call this meeting to order. This committee has been reviewing in private session many reports that are currently on record with regard to the Office of the Ombudsman, and I understand we are ready to proceed with some recommendations.

Dr Galt, I understand you have a motion.

Mr Doug Galt (Northumberland): I move that we release the report and the draft revisions to recommendations in review of the Office of the Ombudsman, dated April 1993, as a working paper to potential witnesses and invite comment on this paper and the 1993 report.

The Chair: Is there any discussion on that motion?

Mr Toni Skarica (Wentworth North): Is the public waiting for the release of that report, Mr Chair?

The Chair: I suppose we're going to find out, Mr Skarica.

Any other comments or discussion? I call the matter to a vote. All in favour? All opposed?

Mr Galt: Did we have a seconder, Mr Chair?

The Chair: We don't have seconders in this process. We had unanimous approval on that one, however, and the motion is carried.

Further motions?

Mrs Barbara Fisher (Bruce): I would like to make a motion that would authorize you as Chair to set the agenda for those participants who would like to act as intervenors in this process. We know there's a list of people who have an interest in expressing their opinions to the committee here, so I move that we authorize the Chair to finalize the agenda.

The Chair: Any discussion on that motion?

Mr Jean-Marc Lalonde (Prescott and Russell): The only discussion I have is on how many people we intend to invite. Are we going to establish a maximum number who will be invited?

The Chair: I think the clerk has some recommendations to make in that regard. Maybe she can comment.

Clerk of the Committee (Ms Lisa Freedman): Just looking at people who appeared before, it would probably take approximately, not counting a preliminary morning, probably three more meetings to accommodate all of the witnesses.

Mr Lalonde: So we're talking anywhere from seven and a half hours then.

Clerk of the Committee: You're talking 12 to 15 witnesses, if everybody who is on one of the potential lists decides to appear.

Mr Lalonde: I concur with that.

The Chair: Further comment? I call the matter to a vote. All in favour? Opposed? I declare the matter unanimously carried.

Further motions?

**Mr Lalonde:** I move that we invite the Ombudsman as the first witness, and that is to be on November 20, 1996.

Mr Bill Murdoch (Grey-Owen Sound): Will you make it quite clear to the Ombudsman it's on this report and on the report that was done some three years ago so she'll know why she's coming here for sure? I know we're talking about the report and everything, but I just want to make sure that the Ombudsman is quite clear why she's coming here.

The Chair: Do you want to make that an amendment

to the motion?

**Mr Murdoch:** No, I just think you, as Chair, will make sure that's done.

The Chair: I'll take that recommendation under advisement. I've heard your recommendation.

Mrs Fisher: I agree with that. I think we are looking to release this report so that everybody is coming here prepared; that not only the report but the past report of 1993 be provided to all of the intervenors, obviously including the Ombudsman; and that if in fact we're setting a date, in support of Mr Murdoch's statements, in fairness to the process everybody comes with the same intent, the same documents and the same understanding.

Mr W. Leo Jordan (Lanark-Renfrew): I take it, then, that the Ombudsman will have received and be in possession of this report, as amended, prior to her coming on November 20?

The Chair: I think we can take that as a given, but I will personally take that as a recommendation of this committee if that's acceptable. I see a lot of nodding heads.

Mr Lalonde: That was my question, what Mr Jordan just asked you.

The Chair: Further discussion? I call the matter to a vote. All in favour? Opposed? Carried unanimously.

Further motions?

Mr Len Wood (Cochrane North): I'd like to make a motion that we run an ad on the Internet and on the parliamentary channel concerning this particular issue.

The Chair: I presume inviting participation in the

public consultation process?

Mr Len Wood: Inviting participation, yes.

The Chair: Discussion? I call the matter to a vote. All in favour? Opposed? Carried unanimously.

Mr Galt: If I may just review the timing, it would appear that the first witness may not be up and going until November 20. As I look at the calendar, it would appear that we have four Wednesdays prior to the end of

the year for this committee to meet. Will we be able to get that all done in those four sittings and make a decision so that it is wound up in this calendar year?

The Chair: I'll ask the clerk to comment on that, with a recommendation.

Clerk of the Committee: I think what will probably happen is, when I start inviting some of the potential people, I'll have a better idea of what the schedule is going to look like. If it looks like there will be a problem in accommodating everybody and finishing before the end of the year, that's something I would probably recommend go back to the subcommittee for its input.

Mr Galt: I'm just thinking we could sit for an extra hour one of those days to accommodate some of the witnesses. I think it is important that this get wound up in 1996. I'd just hate to see it drag out any longer if it's

going to have any credibility.

Mr Murdoch: Having sat through the last one, I'll tell you that it takes a long time and there will be a lot of witnesses, I think. I wouldn't rush it either, though. I understand what Mr Galt is talking about, that he'd like to get it done, but this whole thing is very important. I wouldn't get excited about having to put time limits on it, because there will be a lot of discussion after people have been here and before you come up with your final report. After sitting through it before, I think it's almost impossible for you to have it done this term, so you're going to have to look at that. But don't rush it just because you want to have it done. I'm just cautioning you because I sat on the last one.

Mr Len Wood: I would support the comments that Mr Murdoch just made. I have no problem with the comment that Mr Galt had made, that it's ideal to have it completed this particular year, but I think there's opportunity during the winter months, if we feel we're rushing it too much, to deal with it in January, February or March, even

if the Legislature is not sitting.

The Chair: Might I entertain a motion that the details be referred to the subcommittee to sort out matters of scheduling and timetabling? Could I have a motion in that respect, or further discussion?

Mrs Fisher: I did move a motion that scheduling be left to the responsibility of the Chair, and it did pass. I

think that would actually be in conflict with that motion. I have no problems if you choose to use other members of the committee to work out those details, but I think for making sure that we can actually get on with the process, something I think every member around this table would like to see, that the motion, as passed, should stand.

The Chair: My concern is simply this: As Chair, I'm quite happy to schedule people into our normal hours, but the suggestion was made that we might extend our normal hours to get things done, and I'm a little uncomfortable taking on that responsibility alone. I would be happy if the subcommittee was authorized to deal with that sort of thing.

Mrs Fisher: There's a good possibility we may have many delegations that want to appear. If that happens, I think we could raise it at the close of our next meeting and address it at that time. If it wants to go back to the subcommittee at that time, I think we can deal with it then.

Mr Murdoch: That's your job as subcommittee anyway, so I don't think you need a motion from the committee. That's just your job. Somebody from all three parties is represented on your subcommittee, so I think you can handle that. I have faith in you, John, that you'll be able to do that.

The Chair: Thank you for the affirmation, Bill. Any further comments?

Mr Jordan: Where the submissions appear to be very repetitious, do you have any power to combine them? There are about three basic things they are going to be talking about. Are we going to hear it over and over and over again from people? Is that a requirement, or can we condense it a summarized version?

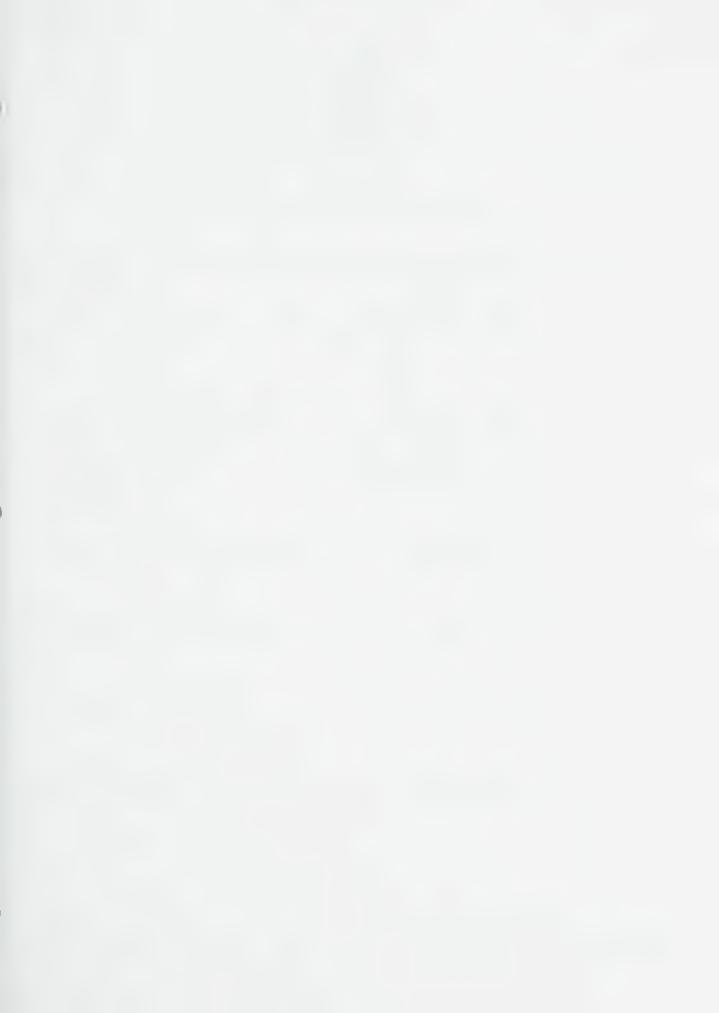
The Chair: There's no mechanism that has arisen out of this morning's proceedings to give anyone the authority to filter the applications that come to us. We will invite participation and I think we take them as they come, unless there's any comment on that that we want to pursue as a committee. Seeing none, I think that's your answer.

Further comment? Further motions? We're done. Thank you all very much.

The committee adjourned at 1047.







#### **CONTENTS**

#### Wednesday 23 October 1996

Organization B-33  STANDING COMMITTEE ON THE OMBUDSMAN				
Mr Carl *Mrs Barbara Mr Tom *Mr Doug Mr Pat *Mr W. Leo *Mr Jean-Marc Mr Rosario Mrs Margaret *Mr John L. Mrs Lillian Mr R. Gary	Caplan (Oriole L) DeFaria (Mississauga East / -Est PC) Fisher (Bruce PC) Froese (St Catharines-Brock PC) Galt (Northumberland PC) Hoy (Essex-Kent L) Jordan (Lanark-Renfrew PC) Lalonde (Prescott and Russell / Prescott et Russell L) Marchese (Fort York ND) Marland (Mississauga South / -Sud PC) Parker (York East / -Est PC) Ross (Hamilton West / -Ouest PC) Stewart (Peterborough PC) Wood (Cochrane North / -Nord ND)			
*In attendance /	présents			
Mr Toni Mr Dave	Membres remplaçants présents: Skarica (Wentworth North / -Nord PC) for Mr Stewart Boushy (Sarnia PC) for Mr Froese Murdoch (Grey-Owen Sound PC) for Mrs Marland			
Clerk / Greffière:	Ms Lisa Freedman			

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 27 November 1996

Standing committee on the Ombudsman

Canteen allowance program

Review of the Office of the Ombudsman



# Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 27 novembre 1996

Comité permanent de l'ombudsman

Programme d'allocations pour les cantines

Examen du Bureau de l'ombudsman

Chair: John L. Parker Clerk: Lisa Freedman Président : John L. Parker Greffière : Lisa Freedman

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 27 November 1996

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 27 novembre 1996

The committee met at 0909 in room 151.

#### CANTEEN ALLOWANCE PROGRAM

Consideration of the Ombudsman's case report in the matter of the canteen allowance program (CAP) and the Ministry of the Solicitor General and Correctional Services.

The Chair (Mr John L. Parker): I call this meeting to order. Welcome to the meeting of the standing committee on the Ombudsman. We're meeting this morning to consider a recommendation-denied case. The Ombudsman is here to present the particulars of her recommendation. Before we commence, I'm going to invite the clerk to review a few of the protocols with us.

Clerk of the Committee (Lisa Freedman): Because this is the first recommendation-denied case this committee has considered, I just quickly want to go over how, in the past, the committee has considered these cases.

The committee usually hears from the Ombudsman first, and after the Ombudsman has finished, you can ask questions of the Ombudsman. We then call up the ministry and go through the same thing: The ministry will make a presentation and questions will then be asked of the ministry. We can then become informal after that. If you need the Ombudsman back or the ministry back, we can make sure that all the questions are asked.

At some point after the committee has heard everything — and in the past sometimes it's been immediately afterwards, sometimes it's been a week later — the committee will go into closed session and make a determination. The determination is fairly simple: It's usually whether the committee agrees with the Ombudsman or agrees with the ministry. We usually inform both parties orally what the decision of the committee is. If we immediately make a decision, sometimes the parties wait and we call them back in.

At a later date, we'll actually report to the House, and that report could be as short as three lines: "This committee considered the evidence and agrees with X." It may be a little longer if the committee so chooses. So it's a fairly informal process in terms of getting all of the information out.

The Chair: I'm proposing that we give half an hour to each side of this case, commencing with the Ombudsman, and that time can be consumed either by a presentation or by presentation followed by questions and answers. We'll see how it goes. The questions and answers would be in the usual rotation, commencing with the government side. Madam Ombudsman, the floor is yours.

Ms Roberta Jamieson: Good morning. Bon jour. Sago. Nice to see you all. I'm here this morning and I

welcome this opportunity as an officer of this Legislature to present my findings that I've arrived at after investigating the canteen allowance program and how it's administered in the correctional system by the Ministry of the Solicitor General and Correctional Services.

When I table a case such as this in the Legislature and bring it to the committee, this is the last juncture of the Ombudsman process. At this stage I will have raised my findings and recommendations with the ministry, brought them to the attention of the minister and the Premier, and at each time provided an opportunity for them to take the necessary steps to correct the unfairness. My powers are not to compel any agency to follow my recommendations; I can recommend only. It's now through presenting this case that I bring this matter before the Legislature.

To be clear, my role at this stage is exhausted. I've completed everything I have a mandate to do and I'm now seeking the support of this committee to take action within its broader mandate. Your work represents the opportunity for the public to scrutinize this matter before it's brought to a closure.

With that said, let me turn to the case at hand.

I have investigated and found that it is unjust and improperly discriminatory for the ministry to withhold the canteen allowance program from inmates on remand — these are inmates who are being held pending court proceedings — while inmates who are convicted and sentenced, on the other hand, are entitled to this allowance. To clarify, remand inmates are those who are being held, who have not been found guilty of an offence, and who are therefore not under any sentence from the court.

The current canteen allowance program — and I'll also refer to it as CAP for ease of reference — currently provides a weekly \$5 allowance in cash to adults or young offenders who've been sentenced to 21 days or more, and it starts after they've been in custody for at least one calendar week beyond the 21 days. It is not extended to inmates who are on remand.

I've looked at other jurisdictions outside Ontario and I have found that it is not unusual to provide this type of allowance only to sentenced inmates. However, I have also found that for the most part in these other jurisdictions, inmates on remand are not housed together with inmates who have been sentenced with the same conditions of confinement. They are held separately. In Ontario, we've got them both held together. So there is a fundamental difference in treatment that arises. It adversely affects those on remand and it disadvantages them. Why? Only because of their status before the courts. Any other differences between these two are justified on the basis of legal status. Sentenced inmates, of course, aren't eligible for bail. Remand inmates, of

course, can't apply for parole and temporary absence permits

Work is often performed by inmates in the province's jails, detention centres and correctional institutions. Rightly, inmates on remand cannot be required to perform work, but they do in some cases work in laundries and kitchens in jails and detention centres, and the system both relies on and benefits from this work. Other conditions, just to fill out the picture for you, like recreational activities and access to library materials are equally available to both remand and sentenced inmates.

Before the introduction of the CAP — the canteen allowance program — the ministry had what was called an incentive allowance program or IAP. That program was only paid to sentenced inmates and was directly tied to inmate participation in work programs. IAP was not extended to remand inmates. As we all know, one of the foundation stones of our criminal justice system is the belief that people are innocent until they're proven guilty by the courts. It was properly decided that involving remand inmates in a rehabilitative program, a work program of that type, would imply that they needed some form of correction and thus compromise the assumption of innocence. That was then.

When CAP was introduced in 1989, its goals were: to allow inmates to purchase personal needs, to assist inmates to assume individual financial responsibility and, finally, to encourage positive conduct. The allowance was provided as a privilege based on good institutional conduct rather than on participation in work programs.

When the link between the receipt of money and the doing of rehabilitative work was broken, there was no longer any basis to treat remand inmates differently from sentenced inmates. We know that the payment of money by itself is not rehabilitative, and in fact the effect of not extending CAP to inmates on remand is not to contravene their right to be presumed innocent, as the ministry has argued; the effect, rather, is to contravene their right to at least equal treatment when they are in institutions — equal treatment to those who are sentenced.

We know that the conditions of confinement are essentially identical for sentenced and remand inmates — identical, that is, except for the provision of CAP. Each week, remand inmates watch as sentenced inmates receive a \$5 allowance for the purchase of writing materials, things like tobacco, deodorant, confections and magazines, while they do without. Imagine yourself in that situation of being held without conviction and not being treated equally to the convicted inmates with whom you're sharing space.

0920

Inmates on remand are already subject to a very high degree of tension. They are in prison, unconvicted of a crime. They are frequently housed far away from their families, doctors, lawyers, communities and cultural supports. Without access to canteen products, in a milieu where others have that privilege, they often become immersed in a pretty dangerous aspect of prison culture which involves barter-type debt. It's well known that that situation can lead to involvement in extortion and, in some cases, violence.

Inmates on remand fill half of our jails and detention centres. Their average stay is about 29 days, but more than 17% of them stay longer, and some significantly longer. One of the goals that the ministry states for CAP is to promote good institutional behaviour. Well, it surely can't be the case that the ministry has no interest in promoting good institutional behaviour among half of its population.

The unfairness that I found in this investigation is of such a basic and fundamental nature that it has been addressed in the United Nations document, published in 1971, Standard Minimum Rules for the Treatment of Prisoners. Those rules establish that untried prisoners should have rights and privileges not extended to convicted prisoners. In the case that I'm presenting to you today, not only are remand inmates not treated equally to sentenced inmates, they're treated worse. That's both unjust and improperly discriminatory, in my view. Any such differential treatment must have a valid justification to stand up to scrutiny. In this case, that justification does not exist

This case has been ongoing for a bit of time, and in March 1993 I thought the ministry had found a solution to this problem; they seemed in fact committed to finding a solution. The ministry proposed to alter the canteen allowance program so that it could be extended to both sentenced inmates and those on remand. Under those changes, they adjusted the qualifying period of all inmates and in fact increased it to two consecutive calendar weeks.

However, six months later the ministry notified my office that financial constraints imposed by the government would not allow the program to be changed as they had planned. In my view, the right to fair treatment is not and cannot be dependent on the availability of resources. The issue of discrimination in this case didn't disappear because of funding pressures or because the money got tight. There could in fact have been further adjustments to the program both to deal with the cost and to provide equal treatment, but that was not done and has not been done by the ministry.

We've had further discussions with them. We've given more than ample time for them to find an appropriate and fair solution. As a result, I reopened my investigation and finalized my report, and we arrived at the point where this case was being presented to the Legislature.

Now, let me be clear. By continuing to rely on fiscal pressure as the reason for not taking steps to remedy this obvious unjust treatment, the ministry has effectively put a price on the right of an inmate to be free from discrimination and, in this case, on the right to be treated in accordance with not only provincial and federal standards but international standards.

The result is a situation that is grossly unfair to those among us who, although held on remand, are innocent until proven guilty and entitled to be treated in accordance with the principles of fairness to which our province and our country are dedicated.

In conclusion, my function as Ombudsman has been fulfilled in this case, and I now ask you to support the recommendation that I've put forward and my findings in this case. That recommendation is:

"That the Ministry of the Solicitor General and Correctional Services take steps within its power to extend canteen allowance privileges to remanded inmates on at least an equal basis to those privileges received by sentenced inmates."

I'm pleased to answer any questions committee members may have.

The Chair: Thank you very much. We're left with about five minutes per caucus, beginning with the government caucus. Mr Froese.

Mr Tom Froese (St Catharines-Brock): The first question is, why is this being brought before us? Why are you tabling this or bringing this before us today? As far as I understand it, this happened in 1993 after complaints were made or whatever, and you brought it forward to the ministry at that time. Why wasn't it dealt with in 1993? Why didn't you bring your report forward in 1993? Do you review these things every so often? I just don't understand why we're getting it now, three years later. It puzzles me that we wouldn't have dealt with this issue a lot sooner.

Ms Jamieson: As you know, the way the Ombudsman Act works, the idea is that cases only come here if we can't solve them with the ministry. In 1993, I thought it was solved. The ministry agreed to take the necessary steps. It was some months later that they decided they would not do that and gave fiscal restraints as the reason. We then continued to meet with them. We were hopeful that they would be convinced otherwise.

This particular case has been the subject of review by no less than three deputy ministers. The ministry restructured. There were a number of intervening matters, but I remained unsatisfied, and that's why we reopened the investigation. I was not content to leave it to the ministry to continue to try to find an answer, because I didn't think they were sincere in looking for an answer, and so that's why in 1995 I reopened it and this case went to final report. The ministry had yet another chance to respond. It went to the minister; it went to the Premier. Finally, when I heard that the Premier was not willing to take steps to correct this unfairness, we prepared it and tabled it with the House.

Mr Froese: Okay. From the documents we received and what you said this morning as well, in 1993, after the situation came forward, the ministry agreed to include remanded inmates under CAP. Correct? The reason they hadn't done it in 1993 was because of the social contract, financial restraints, and, as I understand it, it's still the same reason. I think your position is that financial restraints shouldn't be the issue, it's fairness, as far as you're concerned.

You said these individual inmates were treated worse, but it appears that it's not worse with anything else other than just not receiving the \$5 a week under CAP. If the ministry is coming back and saying it's financial restraints, money's tight or whatever, what recommendations would you make to the ministry to solve the situation?

Ms Jamieson: I think there are a number of options that are open to the ministry; one, of course, is to increase the allocation so that both remand and sentenced inmates have access to the program; another is to have

another look at the length of stay and adjusting the program so it's equally available to both. There are other less attractive options, but those are the two that I think have merit. But there are a variety of ways the ministry could respond to this to deal with the basic unfairness. 0930

**The Chair:** We turn now to the opposition caucus. Mr Hoy.

Mr Pat Hoy (Essex-Kent): Your case of fairness and equal treatment with regard to CAP here is well put. I just want to touch briefly on your statement on the "dangerous aspect of prison culture — incurring barter-type debt." Do you have knowledge that this does occur and is a dangerous situation within the system?

**Ms Jamieson:** I think it is common knowledge within and without the system.

Mr Hoy: Okay. The previous speaker touched on what would provide equal and fair treatment, which is what you're asking for. What's your opinion of the 1993 model? Is that an acceptable option today?

Ms Jamieson: I thought at the time it could well work, which is why, when we raised the issue with the ministry and that was their response, I thought that was acceptable, yes, because it treated people equally. That's the fundamental part of this case, that people aren't treated equally, aren't treated fairly, in fact are treated worse. So, yes, I thought that model addressed it.

Mr Hoy: So, a moderate increase to two consecutive calendar weeks is not the issue; it's the issue of fair treatment?

Ms Jamieson: Absolutely.

Mr Hoy: The time period, not extending it into months and months but extending it by two consecutive calendar weeks was not a big issue; it was the issue of fair treatment, right?

Ms Jamieson: Absolutely right.
Mr Hov: I have no other questions.

Mrs Marion Boyd (London Centre): Thank you very much for explaining so clearly what your concern is. I must tell you, I share your concern; I thought this problem was solved in 1993 too. I remember the decision going through Management Board and treasury board discussion as an adjustment — not in the amount of money. The amount of money, I understood, was to remain constant. It was simply to be an adjustment around entitlement within the program. So I'm rather surprised it isn't resolved either.

I don't think most people know that 50% of the people in our prisons have not been convicted of anything yet and many never are. I think you raise a very serious issue for us in terms of how we treat people who are incarcerated who may never be convicted of the crime for which they're incarcerated as they go through the system and yet meet this kind of unjust treatment. I would think that would not be an encouragement for them to respect the law. Would you agree?

Ms Jamieson: It certainly exposes people who are not convicted of an offence to a situation where, especially in this case, they are without; they are with people who have this privilege, who are rightfully there because they're sentenced. There is a whole economy and culture that exists in our correctional facilities, and those among

us who are there awaiting trial are subject to that culture, and you do get into the very dangerous situation, and yes, that concerns me, certainly.

The degree to which steps can be taken to treat these people fairly so that they are at least on an equal footing with those who are sentenced, I think we are obliged to do that as a humane and decent society, and I don't think no money can be an excuse for unfairness.

Mrs Boyd: Particularly since it sounds to me like your solution is not necessarily to add more money. The solution that you've tried to work out is to use the existing dollars in a different way so that treatment is equal.

Ms Jamieson: Yes, that's true. There are a number of options, and that certainly is one of them. I don't understand, if the ministry has been committed and if government is committed to treating people fairly, why a solution cannot be found to this that is equal and fair.

**Mrs Boyd:** In your research, you found that it's unusual for remand people to be in the same facility with convicted prisoners?

Ms Jamieson: We found that in places like Alberta, BC and some of the states they are in fact kept separate. There are remand centres and then there are correctional facilities. It's true there aren't these kinds of programs for remand and often not for sentenced, but it's also true their conditions of confinement are different. That's why it makes this situation even more dramatic, because they are held together and treated worse.

The Chair: We have some time left, and I had some names on the government side. Mr Jordan.

Mr W. Leo Jordan (Lanark-Renfrew): Thank you very much for your presentation this morning. It seems to me that we're looking at two different things here. This allowance, as I understand it, is part of a rehabilitation program. I don't know if it would be fair, if I'm being held pending trial, to make me part of a rehabilitation program. I'm not even convicted, so why should I be looking for that kind of treatment in that program?

Ms Jamieson: I reviewed what the goals are of the program — to provide assistance to inmates, also to promote positive behaviour, positive conduct in the correctional facilities. It seems to me you'd want to promote positive conduct among half the population. Why would you promote it among only one half, that is, the sentenced, and not the other half, the people being held on remand?

Mr Jordan: I see it as a rehabilitation program that this money is part of, and that program is being applied to the convicted people there, not to the people awaiting trial.

Ms Jamieson: But the reality is that the people awaiting trial are without and are treated worse and don't have access to writing materials and are then at the mercy of the culture that occurs in our correctional centres. Surely that is not a reasonable goal that should be pursued by the ministry or by the government.

Mr Jordan: I think it's something that we have to recognize, that there are the two different situations here. As you've pointed out to Marion, even if we reduced the amount of money to \$2.50 or whatever, if we made it the same amount of money but distributed it on an even

basis, you would be satisfied. So really, the people who have been determined to need rehabilitation, then, would be sacrificing some of their program for people who have not yet been convicted. I would have the personal feeling that if I were awaiting trial and felt very sure of my innocence, I'm not so sure I would want to be seen as part of any rehabilitation program.

The Chair: Thank you, Madam Ombudsman. That

does the half-hour I've allocated.

Ms Jamieson: Could I just respond to that question? I don't want to confuse rehabilitation with this program.

The Chair: Very quickly.

Ms Jamieson: The previous program, the IAP, connected the two: work, rehabilitation, the allowance. That connection was broken when this program came into place. This program was not based on rehabilitation, and it has never been proven that the payment of money is not rehabilitative by itself. The effect here of not giving this allowance to inmates on remand is not to contravene their right to be presumed innocent, as the ministry argues; the effect is to contravene their right to at least equal treatment. It's that point that I've placed squarely before the committee.

The Chair: I invite ministry staff to come forward. You have half an hour for your entire presentation. You can use that any way you wish — leave time for questions or consume it all with your presentation. I'd ask that you begin by identifying yourselves for the record, please.

0940

Mr Neil McKerrell: I'm Neil McKerrell, the assistant deputy minister of the correctional services division in the Ministry of the Solicitor General and Correctional Services. I'm joined by my colleagues, Louie DiPalma, the director of adult institution operations, and Ken Hogg, counsel to the ministry.

I'd like to thank the committee for the opportunity to explain the ministry's position on this matter. In fact, the ministry's position is consistent and has been over the years. We believe our position is consistent with the majority of correctional jurisdictions in Canada. There are 13 in total, and only three of those 13 correctional jurisdictions provide an allowance to remand inmates. Some, in fact, don't provide any allowance to any inmates at all. Our understanding is that many, if not most, in the United States similarly follow that practice.

The ministry's view on the canteen allowance program is based on the fact that the provisions of the canteen allowance program regarding payment of allowance to sentenced but not remand inmates is contained in the regulations pursuant to the Ministry of Correctional Services Act. It is described, it is considered a rehabilitation program for sentenced offenders. It's the ministry's view that remand offenders, not having been found guilty, we have no legal mandate to rehabilitate them.

The goal of the CAP is to enhance the personal and social readjustment of sentenced offenders by providing them with a practical incentive for demonstrating positive conduct, industry and program participation. We believe that it teaches money management skills. It is not, in our view, a payment or a bribe, if you like, as some people might call it, for good behaviour. We have other legis-

lated means for enforcing good behaviour. We have an extensive misconduct system, which is the means by which we govern inmate behaviour in the institutions. The incentive allowance is not payment for good behav-

We have two mandates for our correctional institutions. The first is to hold remand inmates in custody pending a change of their legal status by the court. The second mandate is to administer the sentence of custody imposed by the courts. Within that framework, there are two categories of inmates in our institutions. The remand inmates are persons accused but not convicted of a crime who have been found to pose a risk to the public or who may not appear for trial. With remand inmates in our institutions, our statistics indicate that the median stay for remand inmates is six days. Sentenced inmates are persons convicted of a crime for whom the ministry has a responsibility to provide rehabilitative programming.

Within the Ministry of the Solicitor General and Correctional Services, we have two broad categories of institutions. We have jails and detention centres — and detention centres are a modern form of the jail — holding remand inmates and inmates serving short sentences. We also have correctional centres, which hold exclusively sentenced inmates. There are no remands in our correctional centres at all.

In the correctional centres, which hold the sentenced inmates, we have extensive rehabilitative programming, which includes long-term educational programs, correctional industries, trades instruction, more extensive and intensive clinical programs, the canteen allowance program and we have interim release programs which include unescorted temporary absence, electronic monitor-

ing and parole provisions.

The point has been raised that in 1993 the ministry worked out an agreement with the Ombudsman to introduce the CAP to remanded inmates. That was a result of extensive discussions with the Office of the Ombudsman over a lengthy period of time. The ministry did not fundamentally change its view that the program was intended for sentenced inmates, but it was a compromise position. The Ombudsman's office started out with a set of wishes and the ministry had a set of wishes, and there was a compromise made.

After that compromise was struck, the constraint framework was imposed across all ministries in the government at that point in time and a review was made of the programming within the Ministry of the Solicitor General and Correctional Services, and all parts of the ministry had to tighten the belt. The program for the canteen allowance being extended to include remand inmates was not cost-neutral; it was going to cost an additional three-hundred-and-some-thousand dollars. The feeling was that we could not afford it, so, the information was provided to the Office of the Ombudsman that we would not be in a position to implement the change.

The financial situation hasn't changed. In fact, it's worse. In the fall of last year, we had to reduce the overall spending in the ministry, in the division, and the amount of money that was available in the canteen program was cut in half, so inmates went from receiving \$10 to \$5. The constraint situation is worsening, and

we're currently reviewing the level of expenditures with a view to trying to find additional means of reducing costs. I have no sense at this point in time of how much money will be available for the canteen program, period, far less any changes to it.

The bottom line is that our position and our view has not changed over the years. We believe it is a rehabilitative program and it is tied in our legislation to sentenced

inmates, and we remain steadfast in our view.

The remanded inmates do in fact have all their basic needs met. They have all core, essential requirements met: accommodation, clothing, food, medical attention, fresh-air exercise. They have the opportunity to participate in their spiritual programs. They have access to counsel. They have toiletries provided to them, and they do have in fact writing material made available to them. There is a differentiated amount of writing material available to remanded inmates from sentenced inmates, and remand inmates have additional visiting opportunities that sentenced inmates don't have.

So there is a distinction between the two categories of inmates in the access to programming, in the accommodation provided to them. Only sentenced inmates go to our correctional centres. There is not a single remand inmate in a correctional centre. We believe there is a distinction. The program of canteen allowance, in our view, is part of the rehabilitative programming which is provided to sentenced inmates and not to remanded inmates. I don't know if either of my colleagues have anything they would like to add at this point.

Mr Kenneth Hogg: The one point I would like to make and emphasize is that this is not a situation where, in accordance with existing legislation, the ministry is doing something that the legislation doesn't currently provide for. The legislation in fact makes the distinction in that it calls for the payment of the canteen allowance to individuals who have been sentenced for more than 21 days, so any decision by this committee to make changes to the existing canteen allowance program would require legislative change, because the program is currently mandated by the regulations pursuant to the Ministry of Correctional Services Act. That was the only comment I wanted to emphasize.

The Chair: We have about four minutes per caucus. We begin with the opposition caucus.

Mr Hoy: Good morning. Do the remand inmates become involved in the laundries and kitchens and other areas along with or beside inmates serving the shorter sentences, as you described them?

Mr McKerrell: On very rare occasions. We do not exclude them from the possibility of participating in the kitchen or laundry, but it doesn't happen very often. The reason for that is that the remand inmates are what we consider unknown commodities, unknown individuals. They are under a lot more tension, and they're considered maximum security risk. Because of that, we do not allow them to participate, certainly in any program that is conducted outside. For example, we wouldn't put them on groundskeeping or anything of that nature.

But if a remanded inmate expresses the desire to participate in the kitchen or laundry, his or her situation

would be reviewed very carefully from a security point of view to see if we were prepared to allow that. But it's a rarity — I shouldn't say it's a rarity; it doesn't happen very often.

Mr Hoy: You mentioned that remand inmates are provided with core provisions and you mentioned writing material, but you said that within that there were even some differences in comparison to inmates serving longer time, convicted inmates. Do they receive more or less writing material?

Mr McKerrell: The remanded inmates have writing material provided to them; the sentenced inmates do not.

Mr Hoy: In 1993 you reached a compromise position with the Ombudsman. That was withdrawn because of financial constraints. You also said today that you're under the same difficulty. It would appear to me that the sole reason for not going forth is monetary and doesn't speak to fairness at all.

Mr McKerrell: The compromise position which was put forward at that point in time in a sense died at that point in time. The issue that remains is the ministry's view that the canteen allowance program is directed towards sentenced offenders, sentenced inmates. That is consistent. The money issue has in fact worsened since then and is still very much a factor.

Mr Hoy: But in light of the fact that the dollar amounts you're allocated for this program are changing and diminishing, isn't there some way you can allocate the moneys to both parties in question here? Surely that could be done. Even if the dollar amount was diminished by 50%, you could still put out those dollars equally to each of the participants.

Mr McKerrell: Yes, that's quite correct. The amount of money that's available could be divided six ways from Sunday. There are all kinds of ways in which it could be done. We looked several years ago at a range of options. I think there were half a dozen or more possible ways of doing it.

The issue really is, do we believe we should be extending it to remanded inmates? The belief is that it is for sentenced inmates, consistent with the legislation. If there was going to be a change made, if the minister or the ministry was of the view that it should be extended to remanded inmates, it would be a matter of determining how much money was going to be available, determining a mechanism or a formula by which that money would be distributed among all eligible inmates and then having the legislation changed and also changing the system. We have an electronic system that monitors and tracks this, so that would all have to be changed as well.

So there are two sets of changes that would have to be made: legislative, and the technological changes to administer the program. But the first and foremost thing would be the belief that it should be extended to remanded inmates.

Mrs Boyd: Mr McKerrell, I'm a little confused. You're claiming that this is a legislative change that's needed, and yet your presentation says very clearly that this is contained in the regulations that are pursuant to your act, not the legislation itself. Which is true?

Mr McKerrell: Sorry. It is a regulation change.

Mrs Boyd: So there's no legislation required here. All you have to do is go through an order-in-council process for a regulation. That's a very different situation from a change in legislation, isn't it?

Mr McKerrell: Yes. I stand corrected. I'm sorry.

Mrs Boyd: The second issue is this issue of remand people. You said that the median time that remand clients of the ministry are in custody is six days.

Mr McKerrell: For remanded inmates, that's right.

Mrs Boyd: But the average, the Ombudsman tells us, is 29 days. So this means there are some people who are there for a very long time in remand, and we can think of some examples, and others who are there for overnight or for a couple of days until they have a bail hearing. Is that correct?

Mr McKerrell: Some people remain on remand for very long periods of time. Those are usually offenders with very serious offences. Some are very short indeed.

**Mrs Boyd:** What proportion of remand clients of the ministry, what proportion of those in percentage terms, would ever meet the 21-day threshold?

Mr McKerrell: We have that statistic here. Just give me a moment to find it. I think it would be a small percentage, off the top of my head. I can find the exact figure.

Mrs Boyd: So the dollar amount we're talking about is very small.

Mr McKerrell: Approximately 58% of remand inmates are in custody for one week or less or are on remand for one week or less. The median is six days, and 82% of remands retain their status for less than 30 days.

Mrs Boyd: If you increase the threshold to 30 days, you would be talking about a very small number of these people being eligible for the allowance and therefore a very minor cost, a cost adjustment across. By lengthening the amount of time and so on, you could in fact spread this money around equally to these two parties.

Mr McKerrell: The money could be distributed differently, there's no question. The actual dollar amounts, we have different scenarios with the calculations that are done, so any particular scenario would have to be calculated out to see what the cost would be. But there's no question that the money could be distributed differently.

Mrs Boyd: Basically, you're saying it's the culture of the ministry that dictates whether or not fairness pertains in this case.

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Mr McKerrell: Those aren't the words I would choose. It's the position of the ministry that the canteen allowance program is part of the rehabilitative programming which is intended for sentenced inmates who are deemed to be in need of rehabilitation programming, whereas the remanded inmates have not been convicted of any offence yet.

Mrs Boyd: So they're treated unequally.

**Mr McKerrell:** They are treated differently in a range of ways within the division, the ministry.

Mrs Boyd: Does the new change that you're planning in terms of corrections mean that there will be fewer remand clients of the ministry incarcerated together with sentenced clients of the ministry?

Mr McKerrell: There is a range of options being explored with respect to diversion. All jurisdictions are looking at that. But of those who are in custody, the new institutions which we have in mind will have differentiated living units for different categories of population. There will be wings of the new institutions for sentenced offenders and different wings of the institutions for remanded offenders, so that when someone is sentenced they will move from one area of the institution to the other area of the institution. That's the planning that we're developing at this point.

Mr Jordan: Thank you very much for your presentation. I can't help but come back to the fact that there are two different situations here. You have a rehabilitation program for people who have been sentenced which does not apply to those who are awaiting trial, and so the difference in the allotment of the money. But there are many other differences there, as you have pointed out, in general life situations at the institution. Because I'm waiting for trial, naturally some of the differences, or call them favours, that I have do not apply to the person who's already been sentenced and serving a period of time.

It's also been noted that 60% of this money is spent on tobacco products, which we generally speaking are not promoting the use of, relative to health care and so on.

I find it a little difficult that we are spending this time and money over such an item. I can't see the item being of a major concern in any institution, from the material that's been made available. I find it difficult to accept that since 1993 the previous government was attempting to review it and apparently set it aside on a financial basis and now it's being brought to light again under the same or worse financial conditions.

My feeling is that the victim doesn't seem to be of interest at all. For each person who's in there, somewhere there is a victim or circumstance or something that's happened that's against the law, and we're concentrating time, effort and money on such a minor thing as a \$5 canteen allowance. That's my personal feeling.

Mr Doug Galt (Northumberland): I have been in a couple of the jails, and I'd just like to review for a second the —

**Interjection:** How long?

Mr Galt: No, visiting. Short stays.

I'd like to review the segregation. In a small jail, my understanding was that they were in different cell blocks, those who were under remand versus those there for short sentence. Is that consistent in the various jails?

Mr McKerrell: Sorry. You referred to segregation. Would you be good enough to repeat the question for me,

Mr Galt: Is there always segregation of those under remand in different blocks of the jails and therefore they really don't mix and discuss the different conditions they're serving under and the rewards they receive?

Mr McKerrell: Not as a rule. Particularly in the smaller institutions, there isn't the space to differentiate the inmates to any great extent. The inmates in the smaller institutions are usually distributed in the building according to their ability to coexist effectively. If there are serious offences involved which would put the inmate

at risk, then those inmates would be kept apart from the general population. In the smaller institutions where space is very limited you do not normally find the differentiation according to remand or sentence status.

In some of the larger institutions, you have some wings that are set aside for people going to court, and inmates are moved in there so that it is less disruptive to the inmate population as a whole when they leave early to go to court.

Mr Galt: One last quick question. It seems to me the concern here is equality: one group getting the \$5 canteen allowance, the other group not getting any. Have you considered, as a ministry, just simply not giving any canteen allowance to any of the inmates?

Mr McKerrell: Yes, we have. Mr Galt: That would be equality.

Mr McKerrell: Well, yes. That is something that has been looked at as a constraint measure and it's something that may yet be looked at again as a further constraint measure, but at this point in time no decisions have been taken on that.

Mr John R. Baird (Nepean): I just have two quick questions. I want to thank you for coming this morning. In 1993 this issue arose. Did David Christopherson and the previous NDP government take any different position than the current government with respect to resolving the issue?

Mr McKerrell: Mr Christopherson was fully aware of and in support of the position that the ministry took in 1993.

Mr Baird: The second issue is with respect to — and this is a difficult issue we deal with in virtually every public policy field — your fiscal resources. Should they or can they play a role in your decisions, even with regard to fairness?

I look down at my three colleagues to my right and I can imagine that their school boards, for example, are probably similar to mine. The school teachers in my school board, and in a number of members' here, don't make the same as teachers in the city of Ottawa or the city of Toronto. The students there get 40% less in some cases than students would get for their education. So there's a consistent inequality among a whole host of public policy areas.

Some areas have per capita policing. In my community, for years we had one police officer for every 900, where the city of Ottawa had one for every 600.

In every public policy field there's a gulf between what you'd like to do and what you can afford to do, and I suspect it's the same for many families. Are there any policy decisions you make which involve the expenditure of funds where you don't take into account what you can afford?

The Chair: Thank you, Mr Baird. That effectively consumes the time we've allocated to this portion of this morning's proceedings.

**Mr Baird:** Can we give them one minute just to respond?

The Chair: Oh, you're so persuasive. One minute.

Mr Froese: He wants fairness.

Mr McKerrell: I think we have to be very, very practical about it. Everything we're doing within the

ministry as a whole, all the divisions of the ministry and certainly the correctional services division, is under scrutiny from the point of view of what it costs. Is it something that should be provided, should be done? Can it be done in a different way that is less expensive and yet still meets the need? So one has to say very frankly that everything we do is done with one eye on what we're doing and one eye on what it costs us to do it. That's the reality we're living in.

1010

The Chair: Thank you, gentlemen. I'll invite the Ombudsman now to reappear and respond to any of the issues that arose during the ministry's case.

Ms Jamieson: I'll be very brief because I think we've had a good canvassing of the issues. First, on the question of rehabilitation which continues to be raised, a work program for which inmates receive nominal pay is rehabilitative. When this program changed from the IAP to the CAP program that's been a subject of this investigation, work was no longer a criterion for the receipt of the allowance. The allowance is not rehabilitative. It has nothing to do with rehabilitation. There are lots of other programs or a number of other programs that the ministry has described that are about rehabilitation.

Secondly, it is a fact that inmates on remand and sentenced inmates are housed together. We can list such centres in this province. We have jails; we have detention centres. Both of these routinely house both remand and sentenced inmates. We also have correctional centres. On occasion, if they think, for example, an inmate is going to be held for 60 days or more, they may also hold them there before they get to court.

Third, on the question of money, by the ministry's own calculations, in 1992 they looked at the program and said: "If it were seven days eligibility, what would it cost? If it were 14? If it were 21? If it were 30?" At 21, their own calculations, which I would say even then were generous, were something like \$270,000. The break-even point, according to their calculations, was 30 days.

This is not about money, and the extent to which we keep returning to money and allowing the ministry and the government to rely on this question of fiscal resources is the extent to which we're putting a price on the right of inmates to be treated fairly and is the extent to which we're disregarding our obligations in this province, in this country and internationally. The United Nations has been very clear on this, and I'm not proud to say that I've discovered that in my own province we're not living up to these standards. That's the case, pure and simple. It's fair treatment for people who are incarcerated.

The Chair: I want to give each caucus two minutes to follow up with any questions they may have arising from your comments, beginning with the third party.

Mrs Boyd: Following the failure of the compromise in 1993, did you have further discussions with the then Minister of Correctional Services?

Ms Jamieson: I didn't personally. We had further discussions certainly with successive deputy ministers trying to solve this, because in 1993 it was clear they understood the point. They were willing to make the changes necessary. They were not insurmountable

changes. The regulations are easily amended and there was a willingness to do that.

Mrs Boyd: I would reiterate that it was certainly my understanding that that was the policy of our government, to resolve it, and I am surprised that wasn't done. I was surprised to hear that this had got to this point, that it still hadn't been done.

Ms Jamieson: Well, I remain hopeful. I was hopeful then and I am hopeful now that the change will be made.

Mr R. Gary Stewart (Peterborough): Two questions. Did I understand you to say that work was not a criterion for this allowance? That's what you feel this should be, that you should just get the allowance, period?

Ms Jamieson: No. I'm saying there is no connection in the current allowance of work to this allowance.

**Mr Stewart:** Okay. That's not your feeling, though. You're just saying that you don't have to do any work but you get \$5 a day, or whatever it might be?

Ms Jamieson: The goal behind this program was to provide assistance to inmates to purchase some items. Frankly, the ministry discontinued providing things like deodorant, after the initial issue. It was also to promote positive conduct. I'm saying that has nothing to do with rehabilitation. It is not connected to work. It is connected to providing assistance to people on a fair and equal basis to promote positive conduct. We're talking about half of the population here.

Mr Stewart: I look at a list we have here of free issue items, so really the necessities — I was going to use "the necessities of life," but maybe those aren't the words to use — of hygiene etc are being provided free now. The canteen allowance, as Mr Jordan says, goes either to tobacco products or a chocolate bar a day or a week or whatever. That's basically what this money is for, is that right?

Ms Jamieson: There are other things. For example, when you go into a facility you're issued very modest writing paper, and thereafter you have to buy it. Unless you're writing to me — you can write in a blue letter and it's sealed and it comes out to me — you can't without purchasing it. Many, many people who are incarcerated or are on remand are without any funds. That's why, as I described earlier, they're subject then to having to barter to gain access to the goods they require, because they don't have the allowance. That feeds into a very unhealthy cycle which can involve extortion and ultimately violence.

Mr Hoy: The issue here between your office and the ministry appears to be one of the principles of fairness versus financial constraint. I'm going back to the 1993 agreement and what happened there and why we are here today. Overall, though, I want to ask you, do you believe the CAP program is a valued program for those who are receiving it, notwithstanding your view that it's applied unfairly? The CAP program itself, do you believe it's a good program?

Ms Jamieson: I certainly think if you ask the inmate population, they would say it's a valued and important program. I recognize that in the institutions, because I see what would happen without it. That being said, my concern in this case is fairness in the application of the program. What government decides to do in future in its

policy decisions about the provision of programs is up to government. My business is: If you do it, are you treating people fairly? In this case, they are not.

Mr Hoy: But would the removal of the CAP program for all people be viewed as a fair way to remedy this

particular problem?

Ms Jamieson: I think then you'd be faced, obviously, with requests to provide the materials that you would no longer be able to purchase, things like the writing materials and so on. Whichever way you do it, there are recognized needs that inmates have, whether they're on remand or sentenced, that would need to be responded to.

The Chair: Thank you all very much. It is the custom of this committee to revert to closed session at this point,

and I propose we do that now.

The committee continued in closed session from 1018 to 1027.

The Chair: I'm waiting for the clerk, but I guess there's no reason why we have to, so let's just get on with it.

We have just heard the submissions of the Ombudsman and the ministry on the matter before us. I am opening the proceedings to discussion. Do we have a motion?

Mr Baird: I move that the committee not accept the

recommendation of the Ombudsman.

**The Chair:** We have a motion that the committee not approve the recommendation of the Ombudsman. Any debate?

Mr Jean-Marc Lalonde (Prescott and Russell): Yes. If we look at fairness and if we look at having everybody treated fairly, the fact that they all participate within the same quarter, we could call it, or same area, they participate in the same recreational activities, they also participate in some of the work in the kitchen or the laundry, I really feel that the recommendation the Ombudsman has come up with should be supported.

Mrs Boyd: It is more, I think, if we listen to the presentation of the Ombudsman, than sameness. The United Nations agreement is that if people have not been convicted but are incarcerated pending a trial, they ought to be seen to be treated differently and better than those

who have been convicted.

The issue is not just treating everybody the same, although by having the allowance, whatever amount it might be applied equally across the board for everyone who's incarcerated past the certain threshold of time, that might be the effect. The issue here is our obligation to recognize very clearly that people who are on remand have not been convicted, that we are signatories to a convention that says those who are not convicted ought to be treated better within our prison system than those who have been convicted. Otherwise, what we are doing is, I would suggest, offering a greater level of punishment.

Going without this allowance means going without any of the things that an individual person might decide are necessary to them that are available in a canteen. Those might be personal hygiene products and in many cases are; it might be writing paper; it might be a chocolate bar or a tobacco product. The issue is, if you haven't been convicted of a crime in this country, you ought to have access to those kinds of things. Many of those people are

never subsequently convicted. If they meet that threshold, and we heard Mr McKerrell say that only a small percentage of remand people would ever meet the threshold, then it doesn't seem to me to make much sense.

I would also say to you that it is very clear that the ministry officials have a strong view around this issue and that their view, as we have seen in many cases, unfortunately, in the recent past, has prevailed over the will of the government. I think it is unfortunate that the compromise that was reached in 1993 wasn't put into place, even if that meant a change in thresholds or a change in amount of money available. The rehabilitative issue is an issue for the ministry. It is their view that that's how this program should be. The government can change that. Nobody ever was rehabilitated for \$5 a week. That's not the issue. The issue is trying to maintain some level within a prison system of those who are there incarcerated together not being able to compare and to see that those who haven't been convicted are disadvantaged in relation to those who have been convicted, and that's what happens.

Mr McKerrell was very clear with us all. These folks are incarcerated together. They're in the exercise yard together, they're in the dining room together, and it is very clear to those who have not yet been convicted that those who have been convicted are being treated better than they are with respect to the canteen allowance. I would really urge the government to understand that that's a serious matter, and I would urge you to vote

against the motion.

Mr Stewart: Just an interesting comment, that things are not a great deal different now than they were back in 1993 when this was looked at. This was postponed indefinitely due to fiscal constraints and the introduction of the social contract cuts. The situation we're in now is certainly not different from what we were in back in 1993, under the previous government.

The one thing that concerns me is that we've heard a lot about equity and everybody has to be treated the same. I believe that everybody is being treated the same. Those who are incarcerated over 21 days are treated the same; those under are treated the same. I don't think

there is any inequality whatsoever.

The concern I have, and it's been answered for me, is that the necessities of life, ie, for hygiene etc, are issued free in the institutions. I was thinking the other day, as I toured one, that we're going to have a great influx of people into these facilities because it will eventually be the only place in this country that you can smoke. It was interesting to see the inmates smoking like crazy and yet shortly after, a day or two after, I happened to be in a seniors' home where they're not allowed to. If you want to talk equality, then I think we better look at the whole situation in the country.

I am certainly going to support the motion, because I don't believe they are being treated unfairly and again because the cost factor is no different today than it was back in 1993, when it was indefinitely put on hold by a previous government.

Mr Hoy: Interesting comments from across the way. What we have here is a principle of fairness, and I believe it's being challenged in its delivery by a financial

constraint at the current time. We're trying to put a price on the delivery of fairness, and I don't think that's the way we should rule in this matter.

The other point, too, brought up from other questioning earlier today is, in this question of fairness, we have participants in a plan who have no negotiations into the decision. I think there is a role for us to play, whereas in other situations people may decide themselves collectively what for them is fair and what for someone else in another area of the province is fair. However, in this case, to the best of my knowledge, the participants in this plan have no negotiating rights to decide themselves within their community what is fair for one segment of the population or the other. It's clearly a matter of fairness and one that is being challenged by financial constraint. I would oppose the government motion.

Mrs Boyd: You'll be surprised to hear that I agree with you: There ought to be some constraints on smoking in those institutions. In fact, our government took some actions that did constrain the smoking to some extent. I mean, there was a time when cigarettes for prisoners were, if not free, certainly considerably less. Going on to the regular canteen issue, where the cost was the same as it was to anybody else, made a bit of a difference. I don't disagree with you on that, although I quite disagree with your notion that anyone would be beating down the door of a prison to enter in order to smoke. That really gives people the impression that being in prison is no different from being in the rest of the world. It's quite different. You lose your freedoms. As Mr Hoy suggested, you don't have negotiating power. To compare this, as Mr Baird did, to the ability of different teacher groups or different municipalities to negotiate and decide upon different things is simply not a very fair comparison. It doesn't work, and it has nothing to do with the particular issue.

I will say this: I cannot speak for the former Solicitor General and Minister of Correctional Services, but I was a member of a government and a member of a cabinet that made a decision around this to seek equity between these two groups of prisoners. I was not aware that the decision of the ministry, with the constraints, was to subvert this, and I believe that was not necessary to meet the constraints. All that was necessary was changing the mix of the program, and there had been a great deal of research done to show how that mix could have been changed to stay within the same cost constraints.

This program, this decision, was subverted by a decision of the ministry, to which the minister may have been party or may not — I cannot comment on that — because of the belief of the ministry that CAP had something to do with rehabilitation and therefore could only apply to convicted prisoners, and we heard that today. That is the belief of the ministry, and that is the basis for their presentation and the basis for their decision. But I assure you, it was not the understanding that was originally there for me as a member of the previous government, and it was not my understanding that this agreement to treat these two groups equally, even if that meant a lowering of the allowance, had been made.

Mr Baird: In response to my colleague from London Centre, when I talked about the issue of education

funding, I was just using an example of where public policy doesn't always achieve fairness, that a child in Nepean or a child in Napanee or a child in Kingston township might get less resources from the government to obtain an education than they would in another jurisdiction. I think that is the same in virtually every type of public policy field. Obviously, we'd like a degree of fairness across every public policy field, but regrettably, due to financial constraints, I assume, with the last three governments of all parties, there's a whole host of inequities that remain. I think it's just an example that we do have to make some choices. When we have limited resources available, we do have to make choices on how we expend them. Regrettably, who has to pay and how much we can pay has to form part of our decision with respect to every decision we make, like it would in every family or every small business or every trade union across the province of Ontario.

It is worth noting, though, that this issue wasn't resolved in 1993 and that the cabinet at that time may or may not have discussed it and sought to resolve it. But the minister of the day, Mr Christopherson, who's a fair and reasonable fellow, was the minister for two years after that sad decision was made and the issue didn't change. I suggested that, regrettably, Mr Christopherson had to come to a decision with respect to what he could afford with the resources made available to him. We wouldn't have the Ombudsman before us today bringing this issue up if it had been resolved back in 1993.

I just have one other point I'd like to put on the record. We're not saying that individuals don't have access to that tobacco product or that chocolate bar, the examples brought up by the two previous members; it's should the taxpayers of Ontario be responsible for purchasing that chocolate bar or that tobacco product for someone in our institutions? I think it's a fair and reasonable assumption to say that, regrettably, with limited finances, we don't have the money to extend that program beyond where it is today.

I notice in the documentation that the canteen maximum is about \$40 a week, so there's considerably more room even above that amount. If a prisoner was of a certain financial means, they could meet that by eight times the \$5 allowance, which suggests there's going to be an inequity in the system as it is for someone with greater financial means who wanted to smoke more than \$5 a week would allow.

What we're saying is that if someone incarcerated wanted to purchase it, they'd have to do so with their own money. There would be a user fee for tobacco, a user fee for smoking, a user fee for consuming chocolate bars, something I don't think my constituents would have a terrific problem with.

Mr Hoy: I think the government side is somewhat mixing the issue here. It's not what these people are receiving, it's who is receiving what. It's not whether they get chocolate bars or any other item you want to mention, it's who is receiving this. Some are, some are not.

I think you're clouding the issue when you drag in the purchases of what material and what items these people may buy. The question is applying the program on an equal basis. To bring in the realm of what these people are purchasing is not the question; it is the delivery of the program on an equal basis. I think you're clouding the issue by bringing in whether the program is worthwhile. That's not the question here. It's the application of an existing program and whether it is fair or equitable.

Mrs Boyd: I certainly agree with Mr Hoy that it is none of our business, if this program exists, what an individual buys with the amount they have, if they have an amount. The issue really is that those who are convicted get it under the current program. Those who have not been convicted, who've been remanded, don't.

Who gets remanded? For the most part, unless it's a very serious matter for public safety, the people who get remanded are people who do not have a job, do not have a permanent residence, do not have a permanent attachment to the community. So when my friend from Nepean says that people can have their own resources, they can use their own money, the people who get remanded are far less likely than the average person in the population to have any private money. That's why they're remanded, because they can't show an attachment to the community that will ensure that they appear for trial.

We're really looking at the systemic nature of this discrimination. We're not only looking at those who are not convicted being treated more unfairly than those who have been convicted, we're also looking at who gets remanded. We have many studies showing that in Ontario there is a very disproportionate number of people who are remanded who are already severely disadvantaged in our society. So we're looking at a double disadvantage here for people who've been accused but have not been convicted. I think we need to take very seriously what we are saying if we think that's okay and that a financial restraint is an okay reason for us to discriminate on that basis. It's a very serious matter.

Mr Bill Vankoughnet (Frontenac-Addington): I've listened very carefully to both the presentations of the Ombudsman and the ministry. Certainly the question of equity and fairness is paramount and secondary should be the cost element. Whether you're on bail, parole, remand or whether you've been convicted and you're a longer-term inmate, I believe there should be fairness and equity.

I believe, because there are different categories of people who may be pre-trial or post-trial, there are different types of accused or people who have been through certain stages of the courts. I believe if you treat people who are on bail within certain parameters, people who may be on parole within certain parameters, people who are incarcerated but are remanded — they're a certain group — there's fairness within that group and fairness within the group who have been convicted. I believe that's what we should be looking at. So I will support the government motion.

Mrs Barbara Fisher (Bruce): I do apologize for not being able to be here for all of this. I was in another committee. However, I did take the time to prepare for this

this.

One of the glaring absences, if you will, is of the statistical backup to support some of the things that have

been said by all members present here today. I don't see anything in here that tells me that those on remand are highly unemployed or highly unable to support themselves and this type of thing. I don't see the statistical data. It may be a fact, if that's a fair comment, but I think my comment is also fair. If that was supported in here, maybe it would have been easier for me to see and support that statement. I'm not positive that's the case.

I also wonder a little bit about the bigger picture here. I don't really want to opinionate, nor do I think we should be opinionating on what somebody buys with this allowance. How somebody chooses to spend their money is their responsibility and their right, and nothing, quite frankly, to do with us.

How they get the money obviously has something to do with us. The history of this situation over governments is that there was a need and a reason in the past to look at whether government should be affording anything to purchase somebody's other-than-personal-care needs. Some people would consider those frills, some wouldn't, but I would support Mr Stewart's statement that in fact personal needs are taken care of. So now we're looking at something that's above and beyond that. In the bigger picture, one should question government's responsibility for buying that for somebody.

In saying that, I think the report also would have been helpful, from my perspective anyway, if it demonstrated to me how many dollars per year are spent on average by prisoners, whether they be a remand client, if you will, or an incarcerated accused-and-found-guilty client. How many dollars are really spent? In reality, are we talking about them spending \$5 a week or are we talking about them spending \$40? I don't know.

I can't bring any significance to the argument here, and I think we should be doing that. Yes, we look at the rights, but we also have to look at the economic impact and our responsibility on behalf of taxpayers to spend for what some people in the public would perceive to be a frill. Having said that, I don't have an idea based on the information I have here today that tells me they're actually averaging more than five bucks a week.

Having said that, and with the absence of that information — not that it would make a difference, but I think it should be taken into consideration — I would have to support the government motion because of that.

The Chair: It's not a government motion, it's Mr Baird's personal motion.

**Mrs Fisher:** I'm sorry, the motion before the committee right now. I stand corrected.

Mrs Boyd: Very briefly, I would refer the member for Bruce to the Commission on Systemic Racism report, which gives a very thorough discussion of who ends up on remand, who doesn't get bail prior to trial in this province. It's a very thorough study of that.

The Chair: Further debate? I am prepared to call the question then. Any objection to the question being called? The motion that's been placed before us is that this committee do not agree with the Ombudsman's recommendation

Mr Baird: Could I ask for a recorded vote, Mr Chair? The Chair: A recorded vote has been asked for.

#### Ayes

Baird, DeFaria, Fisher, Froese, Galt, Jordan, Stewart, Vankoughnet.

#### Nays

Boyd, Hoy, Lalonde.

The Chair: I declare the motion carried. Thank you all very much. There will be a five-minute recess.

The committee recessed from 1050 to 1104.

### REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair: I see a quorum; we'll resume this morning's proceedings. I just want to comment that we will adjourn at 12 o'clock, but I would like to summon a brief subcommittee meeting after the main committee breaks.

We are now here to consider the 1993 report of this committee and we are now commencing the public hearing process. We're beginning with the Ombudsman,

who is appearing before us this morning.

Ms Jamieson: Good morning once again. Bonjour. Sago to you all. I appreciate the opportunity to be the first witness in your public hearings. I know today we're here to review the recommendations of the 1993 committee's report, along with the revisions to that report which this committee has put forward.

I think it's worth noting at the outset that a report prepared three years ago may not accurately reflect current circumstances, and I think it's evident, particularly in areas where practices have changed. It may also be the case that changing membership of the standing committee and the evolution of the relationship between the Ombudsman and the Legislature will have some affect as well on our discussions.

In my presentation today I will identify for you the positive aspects of the 1993 report and the working paper and address areas where I think we can work together to strengthen the role of the Ombudsman. Having said that at the outset, I do, however, want to record my very grave concern, and my very grave concern has to do with a number of the proposed changes to the relationship between my office and the Legislature.

There are several recommendations in the report which present a direct challenge to the independence and integrity of my office, of the Ombudsman as an institution which is empowered to protect and to protect the public's right to fairness in the administration of public

service

Every day my office receives enquiries and complaints from people who feel they've been mistreated by an agency of the provincial government. They're people from all walks of life, and many of them are among the most vulnerable in our society. They are persons with disabilities, they're seniors, they're people who are economically disadvantaged, and others who depend on government services.

When these people come to my office with their complaints, they are seeking a court of last resort, one which they can trust to be impartial, to be fair and completely independent of outside influence.

We all know that the origin of this institution, the whole concept behind the Ombudsman, has to do with the right of complaint. The right of complaint to an independent officer of the Legislature provides a way to hold government accountable to the people. If the public is going to perceive this right as a genuine feature of our democracy, they must be assured that their complaints can be made without fear of reprisal and to an Ombudsman who is independent, and independent not only from those agencies they're complaining about but independent from government as a whole and independent of the political influences of the Legislature.

My ability as the Ombudsman to conduct investigations thoroughly and to issue recommendations that provide a remedy for unfairness are the basic tools I have, and they embody the independence of my office and they also serve to protect the credibility of this

institution

In my view, the effect of a number of the committee's recommendations would be to dramatically alter the existing arm's-length relationship with the Legislature and to replace it with a regime that establishes the standing committee as a board of directors and the Ombudsman as

an employee of the board.

Given the present structure of the standing committee, comprised of a majority of government members, such an arrangement would make it impossible to avoid both the appearance and reality of a fundamental compromise to my independence. The door would be opened, and opened wide, for government, through the standing committee, to exercise direct control over the Ombudsman's office, over my investigations, my finances and general operations. In those circumstances the public would quite properly lose confidence in the credibility of the institution.

1110

Twenty-one years ago the Ombudsman was established by an act of the Legislature, and that clearly set out a reporting relationship to the assembly. The act holds me as Ombudsman accountable through a requirement to report annually and, by discretion, to report on any investigation which can't be successfully resolved through a minister or the Premier.

That legislation allowed for a relationship to evolve between the standing committee and the Ombudsman which has been characterized over time by a more or less creative tension. Each of my three predecessors experienced at one time or another a degree of conflict relating to the relationship between the committee and the Ombudsman, and each was engaged in ongoing attempts to reconcile the issues of independence and accountability.

This review then, for me, looking back, is the latest stage of a long and continuing effort to provide certainty and clarity to that relationship. Perhaps, and it's my hope, we're finally about to achieve a positive resolution. I would certainly like to put on record my sincere commitment to do everything I can to promote a good working relationship, a cooperative one, between my office and the standing committee.

In particular, I want to emphasize my own desire to make this review process work. I hope we can agree, as a basic point of departure, on a common goal of strengthening not only our relationship but also the basic principles and functions of the Office of the Ombudsman as an independent institution. If together we can meet that objective successfully, it will certainly benefit the public.

In trying to establish what I believe are the main reference points — and there are 44 recommendations — I have broken them down into eight themes and organized them into categories under these themes, and I'd like to deal with each of the eight themes in turn.

The first one has to do with the annual report and the "Ombudsplan." Now, as we all know, the annual report is a pretty key focus for my activities as Ombudsman every year. It's a main vehicle through which I can provide to the Legislature and the public some basic information about how I'm fulfilling the mandate. It's also an outlet for me to report on trends I see in complaints, concerns I have about government's responsiveness and the responsiveness of public officials to solve complaints. It also allows me an opportunity to set the direction and the agenda for the coming year, and also to raise issues that I feel are worthy of the attention of the Legislature.

There is a requirement in the act for me to table that report and it is a key accountability check for the Legislature. It's therefore crucial for me that that report be thorough, be accessible, and be informative as a docu-

ment.

report.

The recommendations that respond to this, that the committee has put its mind to, are recommendations 4, 36 and 37. They provide for suggestions on information that should be included in the annual report. These proposals are certainly welcome. They reflect the value of our ongoing dialogue and what can be a good working relationship between my office and the committee. I should note that much of the specific information that was requested in these recommendations three years ago is already provided in our annual reports. I would refer you to the most recent one that was tabled in June.

Recommendations 31, 33 and 35 also address the topic of the annual report but raise some issues that require closer examination. My suggestion on this is that we establish a consultative process between us so that the committee can share with me its feedback on an ongoing basis on the content of the annual report and raise any issue that you feel should be addressed. In turn, I would have the opportunity to let you know of any constraints that might apply in my ability to include those in the

Let me turn now to recommendation 31. This is one that you have revised in the working paper. I think this serves as a good example of where dialogue would be very important to have. The recommendation as it's been revised suggests that all tentative and final reports be described and included in the report. Generally, I think this is an excellent idea. Certainly it's an excellent idea to report the outcome of these kinds of cases. Much of the success of the process, as you know, is really about public servants responding positively to tentative reports and final reports and making the improvements in the administration that are necessary, correcting unfairness

and so on. I think you should know about those as well as the public.

There might be, however, a rare occasion where it would not be advisable for me to include a particular case. Let me give you an example. There may be a particular case where the circumstances are widely known, may have been the subject of public attention, a lot of press, and they may be specific to a particular individual. It would be very difficult for me to report that case without offending the confidentiality of that individual, so I would want the discretion to exclude that case. Those occasions, I think, would be very few and far between.

There are also, as you know, restrictions in the Ombudsman Act itself which don't allow me to publish the actual tentative report. This is a technical problem but one that I think should be raised. By definition, these tentative reports are an interim step in the investigative process. I give these to the ministry. They may give me more information. Those reports may be altered. So while I can't publish the actual report, which the recommendation as it's currently worded asks me to do, I certainly can and would report the substance, the content of the issue on those cases, and I certainly would be happy to provide numerical summaries of how many there are, what happened to them and so on. I think we can do that quite easily.

From my own experience, there are very good reasons why the Ombudsman Act provided for the Ombudsman — myself — to have discretion in deciding what to put in the annual report itself. While I am very willing to be as responsive as possible to the committee's requests regarding the information you want to see in those reports, I cannot concede that I have the final responsibility for deciding what will be contained in the report. 1120

Recommendations 2 and 26 under this same theme refer to an Ombudsplan. Here again, the idea of sharing my goals and plans for the year ahead with the standing committee is a good one and I'm very happy to respond to that. In fact, we already have a process of developing plans against which our outcomes are measured and we use those results and those plans and those objectives as the content for the annual report now. Those plans set out the operational objectives for the fiscal year, and I have no difficulty sharing that with the committee. Beyond that, I'm not quite sure what you mean by Ombudsplan and I would welcome any clarification.

If what you are asking for — let me put it this way: It would not be possible for me to share what my investigation priorities are for the coming year, and I don't think you'd expect me to do that. I should also add that any plans that are presented in this exchange of information I would happily do, aside from investigation plans I'd provide as an exchange of information but not for the committee's approval.

To summarize on this main theme, then, I'm very open and indeed solicit the views and input from the standing committee about the activities reported on annually. I agree to share my own plans as part of an ongoing dialogue between us. Given that I have not received an invitation to discuss the annual report with the committee for a number of years, I welcome the opportunity to increase the frequency of our contact.

The second theme I would like to cover of the eight has to do with public education. As you know, getting the message out to the public that the Ombudsman exists and helping them understand and be more aware of their right to complain, along with information of how and when to do that, is a very key part of my job. We do our best in that regard, with limited resources of course. Certainly we're under increased pressure given that we faced a 20% cut in the allocation to our office this year, but in general, and with that constraint, I always agree that more can be done.

For some time we have in fact focused our public education strategies towards those people who are least likely to know about our services and often, ironically, are most likely to need them. We did a survey a few years ago which told us the people who needed us most were least likely to know we existed, so we set about strategically changing that picture.

Recommendation 3(b) in your report suggests using already established communication channels of government organization as a good way of letting people know that they come to us. That certainly is used successfully in a number of settings. I'd like to see more of it and I'm happy to cooperate with that.

In general terms, then, with the qualifications I have outlined, I agree with the intent of recommendation 2, recommendation 3(a) and 3(b), recommendation 4 and

recommendation 5.

I should further qualify, though, the approach of recommendation 5 in amending the act. As with a number of other topics, an amendment may be worth considering if the act is being changed for other purposes, but an amendment, in my view, is not necessary to accomplish the goal in recommendation 5. In that goal, you're proposing that the act be amended to provide that the Ombudsman may engage in public education. In fact, we can and do that each and every day. It's an integral part of our service and I don't think an amendment is necessary. If, however, amendments are to be considered, it would certainly underline the importance of this activity and I would be pleased to see it, provided it wasn't worded to be limiting as opposed to expansive.

The third theme I'd like to turn to I've grouped under "Changes to the Ombudsman Act," and there are a significant number of recommendations that call for changes. I hope, as we discuss over the next period of time, we can reach agreement on which ones can go forward in an amendment process. It's not, of course, my place to speculate whether it's realistic to expect that these changes will get on the legislative agenda, but I know there are uncertainties associated with that process as well as you do and therefore I would suggest that we focus a lot of our attention on the changes we can achieve without amending the act, at least at first.

If on the other hand amendments are felt to be necessary and the assembly agrees to devote time to considering amendments, then I think there is a need for a process to ensure that the words chosen and the statutory language that is picked are the right ones. Some of the topics in that discussion might also need further clarification.

Let me give you an example. Recommendation 13 in the committee's report refers to outlining the jurisdiction of the Ombudsman by schedule, in other words, listing the government organizations about which I can receive complaints in a schedule in the act. In my view, the current wording of the act is quite broad and I think it will suffice for most purposes. If we were to put everything in a schedule — the change that one minister announced yesterday on the changed name from Workers' Compensation Board to the new name — it would be very tough. We'd have to keep changing the schedule every time something was restructured, reinvented, renamed.

My suggestion would be that we have the broad definition kept in, but then a provision to add areas by schedule. So you'd keep both: the broad definition with key tests for characteristics of a public agency, and then listing by schedule. Of course, as you know, the things that I would see listed in the schedule are organizations such as those being talked about to deliver public service through private means. I've written a letter to a number of ministers on this subject and I've shared copies with members of the committee.

If, for example, government decides to provide hydro through a private agency, or any other service through a private agency, it would be important to preserve the public's right to complain if that service wasn't up to standard and for the public to complain to an independent agency outside government. Schedules would be useful to list those extra agencies that didn't fit the broad definition. That's the kind of discussion I think we ought to have to find areas of commonality on the recommendations that you've put forward.

In addition, if the act is to be opened for amendment, I also would like an opportunity for input about changes that I think are important, having worked with the act now for seven years, and changes that would streamline and make more efficient and accessible the Ombudsman process. I'd be very pleased to bring forward a discussion paper with proposals of that nature if the Legislature pursues the amendment route.

Again, I think in this theme there exists a wide area for us to reach potential agreement, where we can work together to clarify and come to terms on some improvements to the act that will govern my work. I welcome to talk more about these in detail.

1130

The fourth theme of the eight themes of the recommendations I have given the heading "Terms of Reference and Role of the Standing Committee" because much of the report speaks to this. Now, while I'm satisfied with the current outline of the relationship between my office and the standing committee and the existing terms of reference, I recognize that the committee would like to seek revision, and I note that recommendation 44, and to a lesser extent recommendation 18, summarize the changes to the standing orders that the committee was seeking.

Most of my concerns about the specific changes that are in your recommendation 44 I'll deal with under another category which I'm calling "Monitor and Review." I won't repeat it twice, but as a general obser-

vation I believe it would be most useful if we can work at establishing agreement on our respective roles before any further changes are made. That will give us, together, a shared understanding and agreement on the basis for our relationship.

For my part, I want to be very clear: I see no conflict between preserving the independence of the Ombudsman institution and providing for a measure of accountability to the Legislature. The Ombudsman Act is very clear in setting out the framework within which that relationship between the Ombudsman and the Legislature is defined. There are two points of contact and both involve a reporting procedure by the Ombudsman to the Legislature. The first is the annual report and the other, which we experienced this morning, allows me an opportunity to bring forward cases where recommendations for action have been denied by a minister and by the Premier, and those cases recognize the ultimate authority of the Legislature in finally disposing of the special cases. They recognize that the cases are brought to the public's view through the elected representatives.

In order, though, for us to achieve clarity in our relationship, I need to understand your present goals and objectives and you need to understand the thinking behind my responses to your proposed recommendations. I think if we can accomplish that, we'll have not only bolstered the role of the Ombudsman but we'll have created a very clear basis for the standing committee to be the effective liaison between the Ombudsman and the

Legislative Assembly as a whole.

Now, the fifth theme has to do with rule-making and I've divided this into the process of rule-making and the content of rule-making, and you have a number of recommendations under this theme. First, the process. Not very many people would disagree that rules are generally not very helpful, either because they're so vague as to be unhelpful or, more likely, because they tend to be limiting. The more rules you make, the more limited will be the flexibility that the Ombudsman has, that my office has, and that's one of the key features of this process.

The flexibility was originally given to the office so that I could, as Ombudsman, adjust to the changing needs and the changing circumstances. The more formality one brings into it, the more limited that will be, the less likely there will be room to adjust to meet the needs of the people who are bringing their complaints forward.

If, for example, the rule-making was proceeded with, I would be very concerned about the limiting effect. I would also be concerned about the content, particularly if the rules attempted to direct the investigative process. Here again, I think if you have rules made by the standing committee, the public would be rightly concerned to see a committee of the Legislature, the majority of whom are government members, bringing forward such a proposal. In such a case, it would be very difficult for me to defend the integrity and outcome of my decisions as being independent.

With that said, I want to focus on a process for consultation should rules be considered. I think I've been very clear that I don't think rules are necessary and indeed there's real danger to them. If, however, the Legislative Assembly wants to proceed with rule-making,

then I would like to encourage you and urge you to establish a process for consultation when you're thinking about proposals for rules.

Your recommendation 27 is of the view that I should be consulted as Ombudsman, and that's a very good start. But before we start examining the need for particular rules, there should be a process for us to identify the need for a rule, what information should be considered and how that information is to be obtained. Recommendation 34 offers an example where such a process would be necessary. In my view, we should also establish, if rules are to be made, that they should be made generally to assist the Ombudsman and my office in performing its function as opposed to limiting the role. I think this is a very basic understanding we should arrive at.

The second part of this theme, rule-making, has to do with the content of the rules. You have quite a number of recommendations on this subject; 1, 14, 29, 30, 34, 33 and 35 all address potential rules that the committee wishes to recommend to the assembly. I want to go through them briefly.

First, number 1. This deals with rule-making with respect to how I conduct investigations of a systemic nature. Systemic investigations and system-wide investigations are both a very crucial part of our present operations and our work every day, for lots of reasons. One, if you investigate complaints that you're getting one by one, you lose the opportunity to make the preventive corrections in the process, so we do these systemic investigations to prevent complaints of a similar nature in the future from arising. They also make very good use of human and financial resources as a result. Finally, they allow us and the public service to address policies and practices that seem neutral but that have a negative impact on certain groups of people.

There appears to be no disagreement between us that those investigations are necessary. The relevant question is, what will a rule do that's not already being accomplished? It's not clear to me why you want to make rules. In the past it's been argued that systemic investigations are conducted to the detriment of individual complaints. That simply is not true. Most of the systemic and systemwide issues arise out of individual cases. That's how we identify them. Where I exercise my "own motion" initiative to do investigations, we do rely on the systemic review to prevent other complaints from coming forward, other individual cases in the future.

On this point, to be very clear, my concern about creating an unnecessary rule on this case, on systemic issues, is whether the possibility of a failure in the drafting to anticipate a future set of circumstances will limit the scope of my ability to do my job. That being said, I welcome an opportunity to talk further with the committee about how we do systemic investigations, how we do system-wide, and to continue that dialogue over time, a dialogue we've not been able to have on this issue.

#### 1140

Next, your recommendation number 14 is about rulemaking on how we investigate the decisions of tribunals. We already have a very well-established approach to dealing with complaints about tribunal decisions, both decisions that are final and those where tribunals can rehear, and you know that we have both creatures in the public sector. In looking at the decisions of tribunals that people complain about — and it can be the Workers' Compensation Appeals Tribunal, it can be the Ontario Human Rights Commission, it can be any number of these organizations that make decisions — I do not sit as the court of appeal. I don't substitute my findings for their decision. That's not my job. I investigate to see whether the procedures they've used, the way they've conducted their business, meets fairness standards.

When a person brings forward a complaint about a decision of a tribunal, we first determine, can this tribunal rehear? If it can't rehear, then I look closer at the decision to see if the complaint raises an issue that would call that whole decision into question. It would have to amount to a nullity. The error would have to be so serious that it couldn't stand. Only then could that decision be re-examined. If, on the other case, they can rehear and we find something wrong, we recommend they rehear.

I also look at process questions that arise from time to time, whether a tribunal can rehear or not. Those have to do with delay; those have to do with backlog; those may have to do with the availability of translation, all kinds of issues. Here again, I don't think there is a need for a rule. This process is working very well and I'd be happy to discuss it further with the committee if you'd like further information on how it's working on the ground.

Now to turn to recommendations 29 and 30, which have to do with the role of the standing committee when a case report under subsection 21(4) of the Ombudsman Act is tabled. The recommendations that you've put forward really point, to me, for a need for a thorough discussion of our respective roles when a case report comes forward. Under the act, as I said earlier this morning, I have exhausted my role once I bring the matter to the Legislature. I will have gone through the head of the agency, raised it with the minister, the Premier, and when I table it, through the Speaker, with the Legislature, I'm looking for the support of the Legislature for my recommendation. From that point forward, I do not have a role. It is up to the committee and it is up to the Legislature to take whatever action you think is appropriate.

In that way, the influence of the Legislature is brought to bear, attended by the public scrutiny that implies. It's my hope of course that you will act to compel a government organization to respond to my recommendations, but that's up to you. I don't have the power to compel, only to recommend. In most cases, with few exceptions, that model works very well.

I'd like next to turn to recommendation 33. This is where the committee is recommending that it no longer review complaints from the public about the outcome of Ombudsman investigations. I certainly welcome the committee's support for and recognition of the Ombudsman as a place of last resort. We have instituted a policy for handling complaints against my own office and it seems to be working quite well. I'd be very happy to talk with you about the details of that process. In fact, we published the details in the last annual report of how

people can come forward and register their complaints. I'd be very happy to speak further on it in our next annual report. Here again, I don't see anything to be accomplished by making a rule.

The next recommendation is number 35. This deals with information to be reported in my annual reports. I've already spoken to a process of discussion which I would like to have with the committee about the contents of the annual report, but making a rule such as that which is outlined in your recommendation 35 I believe will limit the discretion that's been given to me to determine what should be in my annual report. It is, after all, the only opportunity for the Ombudsman to report publicly to the Legislature. Sometimes I want to be critical of public officials, sometimes I want to sound alarms or caution about what I see happening in the public service, and as the Ombudsman, I must be free to do that. It is not appropriate for a committee of the Legislature, in my view, again with a government majority, to author that report. It also would make it very difficult if at the outset rules are made about what should be included. Things change throughout the year. I must have the discretion, obviously, as developments change, to change the content.

The sixth theme that I've grouped the recommendations into I've called "Monitor and Review," because this is the operative phrase that appears in recommendations 16, 17, 25 and 44. This phrase "monitor and review" does represent what I believe is a direct challenge to the independence of the Ombudsman institution and is one of two themes where I have fundamental disagreement with the approach of the committee's recommendations. The phrase "monitor and review" provides an open-ended mandate which may be interpreted to include a very wide-ranging power of control. I think the proposed changes these recommendations envisage, if they're made to the committee's standing orders, would provide nothing less than enabling authority for direct and continuous interference in the Ombudsman's operations. As the independent investigator of people's complaints, this cannot be acceptable to me if we're going to preserve the credibility and integrity of this office.

I won't restate the concerns I outlined in my introductory remarks on this except to say that independence from the political influence of the Legislature and from government organizations that may be the subject of my investigation is really the raison d'être of an Ombudsman. I have a colleague, John Robertson, who was the Ombudsman in New Zealand and the past president of the International Ombudsman Institute, and he said it best. He said: "The real test in the end is how independent the Ombudsman is to criticize executive government processes, to hold government accountable for its mistakes and to achieve credibility and trust with both the government and the governed."

Suffice it to say I have no choice, if I'm to be sincere in this role, but to interpret my mandate as calling on me to resist any measures which may have the effect, whether it's unintended or otherwise, of violating the first principle of ombudsmanship, namely, protecting the independence of the institution.

#### 1150

I have included recommendation 17 in this category. That deals with requiring the Ombudsman to attend at committee at its request. This goes squarely to the issue of control. I think I've been very clear in stating that I welcome the chance to meet with committee and discuss matters of mutual concern and importance, and I think you've seen that over the last period of time. It would only be in the most extraordinary of circumstances where I'd be unwilling or unavailable to meet. So it's very difficult to see why a rule is necessary here.

The seventh theme has to do with estimates and directives. This is the second category or theme in which there is basic disagreement with that which you've set out in recommendations 23 and 24. They both propose that Ombudsman estimates be brought forward to this committee.

As you know, or as I would like you to know, the separation of the Ombudsman's funding, the separation of my funding from the standing committee's consideration of cases, I believe once again is critical to the independent operation of my office as the people's investigator. Indeed, one of my predecessors, the Honourable Donald Morand, in August 1992 said at standing committee the following words on this subject: "This committee, if it has the power to control the expenses of the Ombudsman, has the power to call the tune of the Ombudsman. That's directly contrary to what was intended when the legislation was passed."

I think the importance of preserving independence has been very clearly stated. I also would like to note, from my own experience as the North American vice-president of the International Ombudsman Institute, that the basic tenet of independence in appointment, funding, operation and accountability is a common one throughout the Ombudsman world. Indeed, in those countries which are creating new offices, particularly at the national level, it's becoming very common practice for them to enshrine that independence in the constitution, to give it constitutional protection.

On this issue of estimates and so on, section 10 of the Ombudsman Act is very clear: It requires an annual audit by the Provincial Auditor, one which I publish in our annual report. It is entirely appropriate that I, as Ombudsman, be held accountable for public funds received, but it is also necessary to structure that accountability in a way that demonstrates that I, as Ombudsman, am not a civil servant and I'm not a part of the government bureaucracy that reports to cabinet. The relationship which my office has, then, by presenting estimates to the Board of Internal Economy, achieves that, and it treats the Ombudsman — it treats me — in the same way as it treats all the other officers of the Legislature: the auditor, the election finances commissioner, the Information and Privacy Commissioner, the Integrity Commissioner and so on. We are all treated the same with respect to our estimates.

In this category of estimates and directives, I have a similar comment on recommendation 40. Recommendation 40, as you've put it forward, would recommend that the Ombudsman adhere to Management Board of Cabinet's directives and guidelines. I have a concern

about this, because once again it creates the impression that the Ombudsman is subject to the government's control. That's compounded by the fact that I am regularly called upon to investigate the application of these directives and guidelines by government. To require their adoption by me may well create a perception of bias if they are in fact the subject of an investigation. That doesn't mean I disagree with the need for policies and procedures and so on in the same areas that these guidelines cover. On the contrary, I wholeheartedly agree. Indeed, I'm very proud of our management policies and procedures, because I think we've done a pretty good job at shaping them to reflect what I think are very progressive models that are designed to accommodate the work of our some 84 staff every day. We also are guided in this by the provisions of our collective agreement.

Finally on this theme, with respect to the recommendations about the Provincial Auditor conducting value-formoney audits, that is, recommendations 38, 39 and 41, it should be noted that I invited the auditor to conduct such an audit and it was done in 1993. In keeping with my other comments in this category, though, in my view the existing provisions of the Ombudsman Act, together with my relationship with the Board of Internal Economy, provide appropriate checks and balances for financial accountability. In that case, that report was tabled by me with the Board of Internal Economy, and that I think is appropriate.

Theme 8 I have called "Other Issues." This groups a number of recommendations dealing with a number of other issues, including the amendment power, the appointment of the Ombudsman, automatic adoption of committee reports, standing committee membership and so on. I have some views I'd like to share with you on those based on my own experience. For example, in changing or thinking about changing the Ombudsman's appointment process, it will be very important to ensure and to reinforce the concept of independence by ensuring that the process for appointment isn't conducted in a forum subject to government majority. I can't overstate the need for the public to perceive its investigator as independent from government and beyond the political influence of the Legislature.

I have organized my response to those issues and the rest of the specific recommendations I have not already spoken to in a separate document that deals with each of the recommendations one by one. I've set out the committee's recommendation, I've set out my own response, and I've provided that to the committee.

I'm looking at the clock, Chair, as I know you and other committee members are. I'm very pleased to be in the committee's hands as to how you wish to proceed with those. I would suggest that we have a further opportunity to go through those recommendations, particularly the ones I have not spoken to. I seek your direction and guidance on when you think we might have a chance to do that, as well as to consider the other special case that was tabled on Monday.

The Chair: That takes us just past the top of the hour. That was very good timing. I will take your invitation under advisement and raise that with the subcommittee immediately after this meeting is adjourned, which it is now.

Ms Jamieson: May I ask one final question? This may well be for the subcommittee's attention. Last week I understood the committee would be willing to accept submissions from the public beyond this Friday, which is the date that appears on the screen every day for those people who have the legislative channel. I wanted to know if it's going to be made clear publicly that submissions will be accepted beyond November 29, so that those people who are preparing submissions will know they will still be able to be sent forward. I certainly have let people who have been in contact with us know that, but it's a bit misleading on the TV.

Secondly, I wonder how those people who don't have access to the parliamentary channel, cable or Internet will know that they can in fact make a contribution for this committee's consideration.

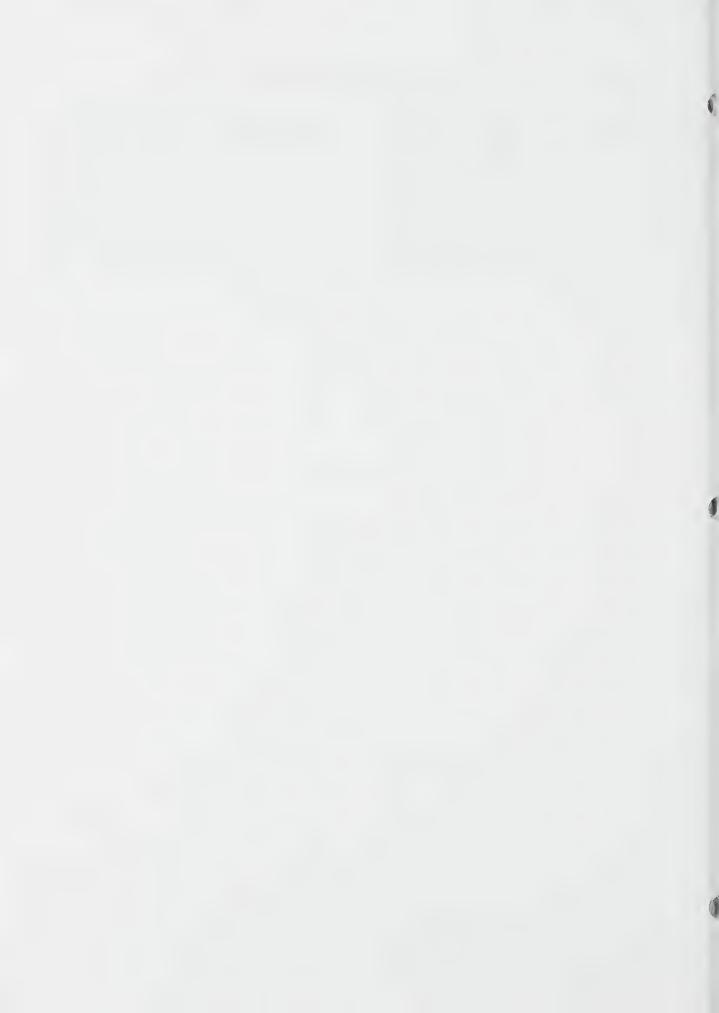
May I leave also those questions and thank the committee for its attention, patience and cooperation this morning.

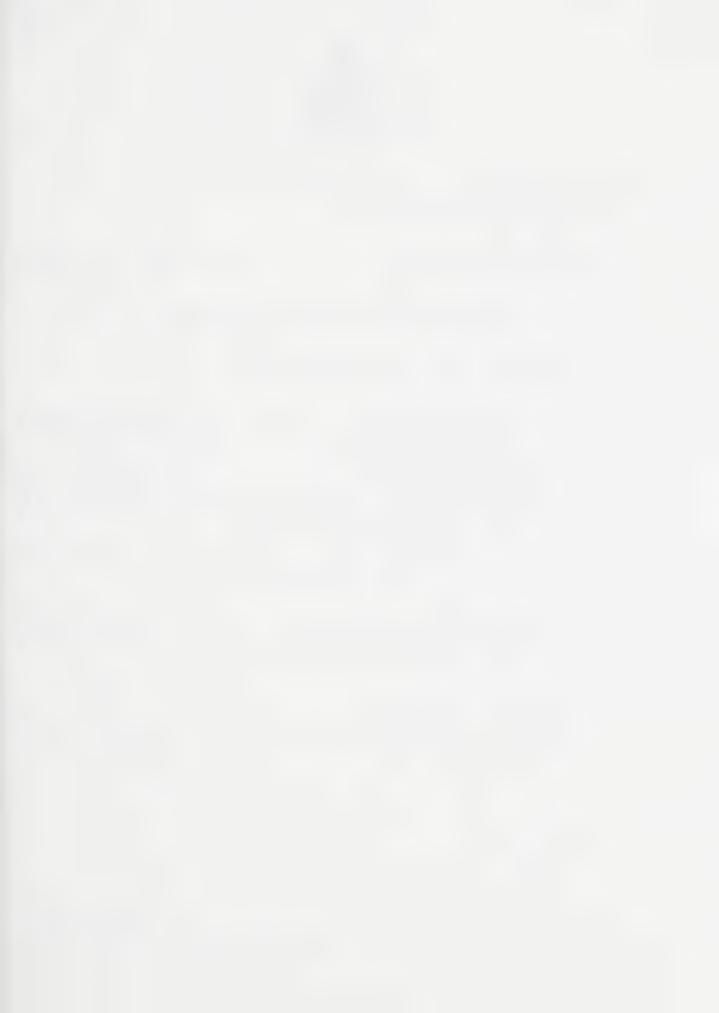
The Chair: Thank you very much for your helpful comments.

This meeting is now adjourned. I ask the members of the subcommittee to remain behind.

The committee adjourned at 1202.







#### **CONTENTS**

#### Wednesday 27 November 1996

..... B-35

Ms Roberta Jamieson, Ombudsman Ministry of the Solicitor General and Correctional Services Mr Neil McKerrell, assistant deputy minister Mr Kenneth Hogg, counsel	
Review of the Office of the O	mbudsman
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	Marchese (Fort York ND) Marland (Mississauga South / -Sud PC)
	Parker (York East / -Est PC)
	Stewart (Peterborough PC)
	Vankoughnet (Frontenac-Addington PC)
	Wood (Cochrane North / -Nord ND)
*In attendance /	présents
	Membres remplaçants présents:
	Baird (Nepean PC) for Mrs Marland
Mrs Marion	Boyd (London Centre / -Centre ND)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Andrew McNaught, research officer, Legislative Research Service





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# Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 4 December 1996

Standing committee on the Ombudsman

Case of Ms C

Review of the Office of the Ombudsman

Chair: John L. Parker Clerk: Lisa Freedman

# Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 4 décembre 1996

Comité permanent de l'ombudsman

L'affaire Mme C

Examen du Bureau de l'ombudsman



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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 4 December 1996

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 4 décembre 1996

The committee met at 0905 in room 151.

#### CASE OF MS C

The Chair (Mr John L. Parker): Good morning, everyone. This morning we are here to consider a recommendation-denied case. It is in the matter of Ms C and the Ministry of Community and Social Services. The Ombudsman is here with us this morning to present her recommendation to us.

I propose to proceed as follows, similar to the application we heard last week: We'll begin with a half-hour presentation from the Ombudsman. She can use that time as she wishes, either entirely for presentation or leaving some time for questions within the half-hour period. After the Ombudsman has presented her case, we will invite the ministry to come forward and will give them similarly half an hour to put forward their side of the issue. After that, if there are any new issues that have arisen in the course of the ministry's case, we'll allow the Ombudsman to return to us and respond to those issues. When we are done with that, I then propose to go into closed session and seek the advice of the committee as to how you wish to proceed further.

That having been said, Madam Ombudsman, welcome back. The floor is yours.

Ms Roberta Jamieson: Good morning. Bonjour. Sago. It's nice to see you all this morning. As the Chair has said, we're here to consider a case report in the matter of Ms C, and this involves the Ministry of Community and Social Services. While this report, you will find, reflects my findings which came about from an investigation of an individual case, my conclusion in this case really provides a very clear example of systemic discrimination affecting a large number of people. It's my hope that by examining the details of this case, it will become apparent what I mean by "systemic discrimination." In my presentation, as in the case report, I will of course follow my usual practice of making the names of individuals anonymous in order to maintain their confidentiality.

The case involves Ms C and Mr M, who were in a common-law relationship from the summer of 1989 to the spring of 1992, when the relationship ended. Both qualified within the rules governing the family benefits allowance under the Family Benefits Act for what is called a disability allowance.

After the relationship ended, they were each receiving their disability benefit, and that was calculated on a single adult basis. In the summer of the following year, 1993, they began to live together again. The family benefits allowance policy and procedures provide that when two individuals live together in common law or

marriage, their benefit is calculated on a family unit basis. The family unit rate is more than the single rate but less than the total of two single rates. I'm not going to make any findings about this aspect of the policy. There's no doubt that two people can live more cheaply together, especially because expenses like rent can be shared. Adjusting the amount of the benefit to reflect that therefore can be justified in my view.

The policy also provides that once you are deemed to be a common-law couple under the benefit program, you remain as a couple whenever you live together. I'm also not making a finding about this aspect of the policy. In the case of Ms C and Mr M, the ministry determined that they were again living together and therefore the calculation of their benefits had to revert to the family unit rate beginning in September 1993.

The problem in the complaint brought forward by Ms C began when the September cheque for the total of both of their benefits arrived in Mr M's name only. Although Ms C qualified in her own right for a disability benefit, it was being paid to Mr M. Ms C wanted a cheque for her own portion of the benefits in her own name and proceeded to make her case quite vocally to ministry officials.

Ms C had attempted to prevent this situation from arising by requesting that the ministry consider the relationship co-residency rather than common-law. She continued to make that request after the cheques had been combined in Mr M's name. The ministry did not grant this request and instead, using the previously determined basis of their relationship, kept her entitlement in what they called "Mr M's budget." As a result, for Ms C to receive money in her own name, she needed either to convince Mr M to allow the whole benefit to be paid to her or to leave the relationship. Mr M would not agree that the whole benefit should be paid to Ms C.

When we asked a ministry employee interviewed during the course of our investigation why this procedure of making out the cheque in the man's name was the one they followed, they offered this comment, and I quote: "Historically, the cheque has gone in the man's name (I hate to say it). Sometimes a man will ask to have the cheque in his wife's name." This practice, in my view, clearly reflects a time when there was an assumption that the man was the head of the house. I don't think it's unreasonable to suggest that those days are long gone in the province of Ontario in 1996. Under these circumstances, the only way Ms C would get her benefit in her own name would be if the relationship ended. That is exactly what happened 16 months later, in December 1994.

What happened to Ms C reveals not just a discriminatory treatment of one individual, but also a larger problem of systemic discrimination.

By now we're all very familiar with the concept of direct discrimination and we're able to identify differential treatment of individuals based on sex, race, religion or other attributes when it occurs. Systemic discrimination, however, begins from an approach where everyone seems to be treated the same, which makes the existence of a problem more difficult to observe. Unfortunately, the effect of a same-treatment policy may be to create a negative impact for a particular group of people who share a common characteristic. In the case I'm presenting to you this morning, that group is women receiving the family benefits allowance who are married or living in common-law relationships.

To explain, the ministry's policy is to treat all families equally by issuing one cheque per family unit. In practice, however, this means that in 72% of the cases reported by the ministry, the one cheque goes to the man in the relationship. In such cases there is an onus on the woman in the relationship to have this arrangement changed. In other words, unless a woman is able to gain the agreement of her spouse that the total entitlement should come to her, the ministry sends the cheque to the man as a matter of practice.

In my view, this is a particularly unreasonable burden in any relationship where power is not equally shared, and these relationships are all too common today. While this negative impact may be an inadvertent result of the policy, there is no less discrimination present here than if it was intentional. Discrimination is discrimination is discrimination. The issue here is not whether it is tolerable; the issue is how a remedy can be provided to correct this problem.

Even if in a perfect world every relationship had a balance of power between the partners, the question might still be posed as to why either should not receive the benefit to which he or she is entitled in his or her name. Just imagine if you began a marital relationship and as a result your employer asks the name of your spouse in order to make out your paycheque in the other person's name. Imagine further that an assumption is made without consulting you and your cheque is summarily sent to your new spouse. Someone would certainly hear about it. The situation before you is no different. In this case I have heard about it and I have found nothing in my investigation that justifies paying one person's entitlement to another.

I am therefore asking you to support a very straightforward and simple remedy. It is that in the case where both recipients are entitled to receive family benefits in their own right, the ministry should make it a practice to issue separate cheques to each person equal to 50% of the total benefit.

I want to take an opportunity to respond to a number of issues that have been raised by the ministry as a way of explaining how I've come to this recommended solution and as a way of dealing with the objections they have put forward.

First, the ministry has said that my recommendations will require changes to the family benefits allowance

regulation and it notes that the legislative framework distinguishes between recipients and beneficiaries of an allowance.

Of course, the Ombudsman Act requires me to investigate complaints, and where I am of the opinion that the practice complained of is "unreasonable, unjust, oppressive, or improperly discriminatory," or was in accordance with a rule which may be described in the same terms, I report and make recommendations on how to rectify the practice.

I have reviewed and we have reviewed the law in this, and there is one area to which I in particular want to draw the committee's attention. The Family Benefits Act is not exempt from the application of the Human Rights Code. The Family Benefits Act must be interpreted and administered in a way that's consistent with that code, because the code has primacy over all statutes unless there's an explicit exemption.

It is also apparent to me that there is room under the provision of the Family Benefits Act for the issuing of two cheques. Otherwise, the "one cheque per spousal couple" rule would mean that as a result of an individual's marital status, the individual is deprived of receiving benefits in his or her own name. That's a violation of the provision of the Human Rights Code that prohibits discrimination on the basis of marital status.

If the ministry takes the view that changes are necessary to clarify either the Family Benefits Act or the regulations, that may be seen as a consequence of my finding. I don't think it's necessary, but if it is, so be it in order to allow the ministry not to be in conflict with the Human Rights Code. I have no argument with that course of action if the ministry feels that's necessary. You and I all know that regulations are changed without great difficulty each and every day.

The ministry has also advised that there are other options when making cheques payable. They've advised that when the benefit is being mismanaged or the recipient is not capable of managing the funds, it may switch the recipient to the other spouse or pay the benefit to a third-party trustee.

0920

Of nearly 18,000 couples identified by the ministry as having no children and receiving family benefits allowance, almost 13,000 of the cheques go to the male. To reverse that practice would leave the same problem unresolved. The only difference would then be that it would be mostly men who are not receiving their benefit in their own right, and that would still be discrimination.

To require, as they now do, the non-recipient to request that a joint benefit be switched to her name assumes that this is feasible within a relationship, quite apart from the discriminatory piece. It's not difficult to imagine cases where the request by a woman for this change would be the basis for recrimination from her male partner. The reality of power imbalances within relationships must be considered as a very key factor in finding any solution to the discrimination which I found to exist.

With respect to the suggestion of the trustee receiving funds, that provision has to do with circumstances of incapacity and isn't appropriate where there is no issue of incapacity on the part of either spouse.

The ministry has also suggested that the allowance be made payable into a joint bank account where requested. In the case of Ms C, Mr M refused to open a joint account, which illustrates the problem with this approach. It is an interference as well with the couple's personal banking arrangements and it assumes that the non-recipient would be able to have access to her portion of the funds before they were withdrawn by the other spouse.

Under my recommendation, each person would receive half of the benefit in separate cheques or direct deposits. As a result, they would each retain control over their own benefits for which they personally qualify.

The ministry has also said it's concerned that with separate cheques for 50% of the benefit, the partner liable for a big cost like the rent or mortgage wouldn't have enough money to cover it. It's argued that this might result in more workload for front-line program delivery staff at the ministry.

There's no difference, in my mind, between a situation where each partner receives a separate cheque for one half of the benefit entitlement and that of thousands of couples in the province who have separate sources of income, neither of which is sufficient to cover a single large cost like rent. These couples seem to manage. What makes a couple living on family benefits allowance so different? There is nothing inherent in qualifying for family benefits allowance which makes a couple different in this regard.

The entitlement to benefit is based on individual qualifications. The calculation of the benefit is based on a formula applying to the couple's marital status. Neither provides any guarantees on how the money is spent. If the recipient under the present scheme doesn't pay the rent, the non-recipient has no funds on which to rely to weather the consequences. In the case of Ms C, she was left with no money in December 1994 when Mr M took the joint entitlement and left the province.

Under my recommendation, each person would have access to and autonomy over the money to which he or she is personally entitled. From there they would face the same money management challenges of any other couple in Ontario, and it's not our place, mine or the ministry's, to make further judgement.

The ministry has also pointed out that a change to the one-cheque policy has other implications for its program delivery. For instance, it would have to be extended to cover welfare benefits issued under the General Welfare Assistance Act. Quite simply, if the systemic discrimination extends to other areas of administration, it too needs to be addressed.

The ministry identified in its response to my final report that individual drug and dental cards would also be needed. This would not be unusual. In most workplace drug and dental plans which are based on family coverage, there are a number of approaches to issuing individual cards which then apply to a single-family account. This is done every day.

In the case report, I raise the issue of dividing the entitlement where there are children as beneficiaries in

addition to the adults. This is an example of an area the ministry will also have to address in implementing any recommendations in a manner that will be consistent with the Human Rights Code. In any event, the necessary rules and calculations will be no more complex than the multitude of factors already taken into account in determining entitlements.

In the ministry's response to my final report it also says they will incur increased costs largely due to system changes. I understand this to mean computer system changes, but I expect there will also need to be some analysis and policy time spent on implementing the change. They also raise the possibility of having to issue manual cheques, which would involve more work.

During the course of my investigation, I asked the ministry on a number of occasions to quantify these potential administrative costs but I was not given any such accounting. This aspect of the ministry's objections remains entirely vague.

In the absence of specific data, I deliberately kept my recommendation-remedy very simple. My recommendation only requires one additional step to the existing procedure: the division of the entitlement, as calculated, by two. Other than this, the actual cheque processing is not different than if the couple had not entered the relationship and two cheques were still being issued or if the couple had ended the relationship and two cheques were then required for two single recipients.

We know that the program costs less when a couple is deemed to be in a common-law relationship because the total to be paid is less than the sum of two individual entitlements, but this should not be a factor in the administration of the program. Nobody should be put in a situation where they must leave a relationship in order to have the funds to which they are entitled.

There is also the basic question of who is bearing what costs in the present arrangement. When one of the couple lacks immediate access to the portion of the family benefits allowance entitlement that is rightly hers or his, the cost is borne by that individual and is measured in loss of autonomy, dignity and self-respect. These costs might not be easily quantified but they are very, very real.

The ministry states in its response that my recommendation will be seen as intrusive, involving the ministry in determining how and to whom a social assistance allowance will be provided based on personal relations and dynamics. The ministry has this backwards. It is precisely the reverse which is true.

In my view, it is intrusive to perpetuate the outdated assumption that the male is the head of the house in the administration of public programs. It is intrusive when a couple is required to establish a joint bank account to receive individual entitlements. Placing all of a couple's benefit in the hands of one partner and accentuating any imbalance of power as a result, and making the assumption that issuing separate cheques will mean non-payment of rent — these are intrusive practices.

Issuing two cheques avoids making assumptions. It puts into each entitled person's hands the benefit for which he or she qualifies.

To summarize, while a change in this practice may not benefit Ms C, it will avoid the same situation occurring for many other Ms Cs in similar circumstances. By bringing her situation forward, Ms C has very courageously lifted the cloth on a practice of systemic discrimination.

As members of this committee of the Legislature, you and I have the opportunity, me by bringing this case forward and you by supporting a remedy, to complete the work Ms C has started some time ago, now that the discrimination has been exposed. You'll be doing exactly that by supporting my recommendation, which reads:

In the case where both recipients are entitled to receive family benefits in their own right, the ministry should make it a practice to issue separate cheques to each person, equal to 50% of the total benefit.

Thank you very much for the opportunity to present this case. I'd be pleased to respond to any questions.

The Chair: We have about two minutes for each caucus, beginning with the government caucus.

Mr Tom Froese (St Catharines-Brock): Good morning. In my former life, I was in banking. I can see arguments on both sides of this case. In the amount of time I was involved in banking, I had specific cases where you had a dispute between partners. You just can't win in that situation. That's my opinion. If you do one thing on the one hand, you get in trouble with one partner or spouse, and if you do another thing, you get in trouble on the other hand.

My question is, when you interviewed Mrs C, did she know what the situation would be if she joined together in a common-law situation with respect to benefits?

Ms Jamieson: Ms C tried to avoid the result by asking the ministry to consider it as co-residency as opposed to common law, and then she asked for the cheque in her own name.

Mr Froese: As I understand the situation, she entered into a common-law situation, then it was broken up, and then she re-entered it. But did she understand how the benefits would have been paid out to her under her situation if she would enter into common law?

Ms Jamieson: I'm not sure what she understood. As I see this case — the member has talked about a dispute between two partners and what she knew or didn't know. I focused on the unfairness in the ministry's practice. This is not about a dispute between two individuals. This is about the way the ministry administers a public program, and they administer it in a way that perpetuates systemic discrimination. It doesn't matter, in my view, whether Ms C or anyone else knew that they would be on the receiving end of systemic discrimination when they entered a relationship. The systemic discrimination is wrong and should be corrected.

The Chair: I turn now to the opposition caucus.

Mr Pat Hoy (Essex-Kent): In your recommendation, you say "the ministry should make it a practice to issue separate cheques." I'm somewhat curious about the phrasing you use. If both recipients say to the ministry, "We're satisfied with one cheque," are you adamant that every situation receive two cheques, or is there flexibility there that those who want two cheques can receive two and these perhaps 13,000 other recipients could say, "We're pleased with the system the way it is"? By

choice, both partners would say, "One cheque is sufficient in this household."

Ms Jamieson: I think, Mr Hoy, that the issue that would still concern me is how they arrived at that representation of an agreement. If you're in a situation, as a woman — and it is the women who are really on the receiving end of the systemic discrimination in this one — if you're in an abusive relationship or where there's unequal power, it may end up being presented as something to which you have agreed, but you may be afraid to disagree.

I think the simplest way of keeping the ministry out of deciding where there's power and balance and where there isn't, if they're each entitled, they ought to receive their entitlement. If they then want to put their funds together, that's up to them. I'm saying that it's not appropriate for the ministry to be involved in that. That would allow each person to be empowered, to have the dignity and self-respect to do that with their funds which they wish.

Mr Hoy: I appreciate that clarification of your view on this. We can move to the cost factor then. You're suggesting and stating that there are savings to the ministry in providing single benefits in the first place, and that the issuing of cheques to two people would not necessarily be a cost factor because there are savings within that as opposed to a one-family benefit cheque under the definition.

Ms Jamieson: It's quite true that if the only way out is for people to separate, if the only way for a woman to receive a separate cheque is to leave the relationship, to then pay two separate adult entitlements is more than if you paid with people staying together. That's true.

The ministry has said on a number of occasions, but very vaguely, which I find very troubling, that they're unable to quantify an issue they've raised over time, that this is going to be burdensome to administrate and so on. I'm very sceptical about that. I'm not saying increase the entitlement; I'm saying leave the couple entitlement alone, which is less than two individual entitlements. Leave that entitlement alone, divide by two, and at the end of the calculation, send out two separate cheques. It seems simple to me.

Mr Rosario Marchese (Fort York): That would be my sense too. It would deal with the whole issue of assumptions that we make, and I think you're dealing with some of those. The first assumption is that it is assumed that the man is the head of the household. It is also assumed that this is the practice, and there are no problems between — or there may be, but if there are problems, they will resolve them on their own, man and woman.

By doing what you're suggesting, we relieve ourselves of those assumptions and rid ourselves of those possible discriminatory practices and/or recriminations which you touched on as well. To do it any differently would put the onus on the individual to then call the ministry and say, "Well, fix this for me, because I don't want it that way." I guess by changing your practice, you remove that onus on an individual and the problems that come as a result by changing the practice.

Yes, there may be some costs possibly in terms of administration in the beginning as they change the system, but I think in the end it would be a better practice. That's my sense.

If I have time, on the issue of co-residency versus common law, if you treat it as common law, the benefits would be reduced, but if you treat it as co-residency the benefits would be the same but divided in two parts. I find that a reasonable presentation this morning. That's all for now.

The Chair: That concludes the case for the Ombudsman. I now invite the ministry to address us. It's the same deal: You have half an hour. Use it as you wish. Might you begin, though, by identifying yourselves for the record?

0940

Mr Kevin Costante: My name is Kevin Costante. I'm the assistant deputy minister of social assistance and employment opportunities. I have with me today at the table Allan Kirk, who is a manager in our social assistance program branch. I also have several ministry staff who have joined us, whom I'd like to introduce in case there are questions they need to answer later. They include Donna Ingram, who is our manager in our information services branch; Debra Tackaberry, who is a policy analyst; and Marilyn Marshall, who is legal counsel with the ministry.

I'd like to thank the committee for giving us this opportunity to respond to the Ombudsman's report on file number 98875 in the case of Ms C. First of all, I'd like to make it clear right from the start that with all due respect, the ministry fundamentally disagrees with the findings and recommendations of the report. The position is based on our knowledge of the proposed approach, and it would seriously undermine our ability to deliver social assistance in Ontario.

The report recommends that the family benefit allowance amount be determined for the family unit and that the allowance then be split on a 50-50 basis, with separate cheques being issued to the individuals in that family unit. In family units where there are children, the report also recommends that any portion of the allowance for the children be attached to the cheque issued to the custodial parent.

Under the Family Benefits Act, eligibility for an allowance is determined according to financial need in a given category, and whether a person is living by themselves and on their own or living as a member of a family unit. When couples live together as a family unit, they are evaluated as a family for the purposes of social assistance, with the head of that household as the recipient of the social assistance payment.

The approach proposed by the Ombudsman would set a precedent that would leave the way eligibility is calculated in conflict with the way the payments are provided. Ultimately it could lead to a more complex and costly individual-based rather than family-unit-based social assistance program.

Under the Family Benefits Act, a recipient is defined as a person to whom an allowance is paid and the beneficiary to mean a person on whose behalf the benefit is provided. The legislative framework distinguishes between recipients or individuals who receive an allowance and others who are included as beneficiaries of an allowance.

To implement the Ombudsman's recommendations requires regulation amendments that would provide new eligibility rules and new allowance calculations. The ministry also could not restrict the application of this amendment and would have to extend it to other case types in the Family Benefits Act and the general welfare assistance program. Given the current social assistance caseload, there is a potential here for splitting cheques in over 61,000 family-based cases on general welfare and over 39,000 family-based cases in the family benefits program, so in excess of 100,000 cases.

In addition, this could lead to further requests from dependent adults other than spouses who are currently treated as beneficiaries in the family unit for further splitting of allowances. Treating members of families as individuals as opposed to a benefit unit for the purposes of applying for and receiving social assistance would also result in increased costs to the province, as the Ombudsman has noted.

Also, significant and costly systems changes would be needed to implement this approach. The social assistance computer system, which is fairly old and outdated, is now set up to issue family-based allowances. Given the complexity of the changes needed, a preliminary analysis suggested it could take anywhere from 18 months to two years to make the systems modifications required to implement this approach. We've done a rough estimation of the cost of making that systems change and it's about \$750,000. In addition there would be added costs for sending out two cheques, for postage, additional cards and other things, in the sense that there would be all the administrative costs of treating these as separate cases. That could easily amount to another half a million dollars, again depending on the number that would be taken up within the 100,000.

Implementing the recommendation would also require, as the Ombudsman has noted, issuing of separate drug and dental cards for each individual.

Without the necessary systems changes, the only means of implementing this recommendation would be to issue social assistance allowance cheques manually on an individual basis at a local level. This would be a tremendous increase in the workload for a system that is already struggling with a very heavy workload.

In summary, there are serious implications in the approach proposed by the Ombudsman on a legislative policy and operational level across the social assistance system. All of these implications could create additional costs for the province, with limited and questionable benefits to the social assistance clients.

The ministry takes the position that when couples continue to live together as a family unit, they will continue to be evaluated as one unit for the purposes of social assistance, with the head of the household as the recipient of the social assistance payment.

I'd like to thank you for giving us an opportunity to respond, and I'd be pleased to take any questions.

The Chair: Maybe 12 minutes per caucus, beginning with the opposition caucus.

Mr Hoy: Good morning. You mentioned that your computers are somewhat aged. Do you anticipate that in the future you're going to have to upgrade them anyway? Can you continually work along with these, regardless of this particular suggestion today?

Mr Costante: We are in the process of structuring a contract to replace those computers. Depending on when that contract is issued, we could likely be in a situation of having a replacement for our CIMS main system;

hopefully in late 1988 would be a guess.

Mr Hoy: Do you anticipate that you might spend

\$750,000 to upgrade them?

Mr Costante: I think if we do get to issue the contract to replace it, it would not be a wise investment to make this change to the current system unless there were some edict that we had to. You would likely try to make the changes as we develop the new system.

Mr Hoy: So it might be a gradual progression?

Mr Costante: I don't think it would be gradual. I think you would either put it into the new system or you would not.

Mr Hoy: The cheque writing that takes place coming out of your ministry, you don't issue the cheques yourself, I assume. Do you have tapes that you send over and the cheques are printed elsewhere?

Mr Costante: The cheques are generally printed at

local offices.

Mr Hoy: I don't have any other questions.

Mr Costante: Additionally, there are a lot of individuals on family benefits — I believe it's about 80% who get direct deposit.

Mrs Elinor Caplan (Oriole): It's 80%?

Mr Costante: It's about 82%.

Mrs Caplan: My first question was on the question of direct deposit.

I think what this committee has to deal with and what the government has to deal with is the principle. The Ombudsman is saying that the notion of head of the household is outdated. It is intrusive for the ministry to make that determination and it is discriminatory, because based on the number of cases you have, the determination of head of the household as being male is almost two thirds of your caseload. That notion of relationship today and forcing partners in a relationship to have to leave the relationship to receive the entitlement for which they qualify is systemic discrimination.

The notion is, given all the realities you've brought forward, whether the government agrees in principle that this is systemic discrimination. Do you think the Ombudsman has made the case on the basis of the outdated notion of head of the household and does the ministry believe this is discriminatory, notwithstanding the cost of the remedies and so forth? Let's start on the

basis of principle.

Mr Costante: First of all, the ministry doesn't make the determination of who the head of the household is.

That is made by the couple in question.

Mrs Caplan: I'm talking about the idea of head of the household, whether that notion is outdated and discriminatory, regardless of who it is. The fact that it more often than not is male — the Ombudsman has said that's the reality, based on outdated notions and on traditions in

society. But the question is whether you agree with the Ombudsman that the whole principle of having to designate a head of the household is discriminatory, placing a couple in the situation of having to do that, given the power imbalance in a relationship.

Mr Costante: What we're dealing with here, though, is a family unit. Social assistance is a payment of last resort to a family unit. The entitlement is based on family income and on family need, and it just makes sense that we make the payment to a single family unit, and they have to make the decision as to who that payment is made out to.

Mrs Caplan: I'd like you to say yes or no: Do you agree with the Ombudsman that having to designate a head of the household, given that two-thirds are going to be male and she believes this is discriminatory — do you believe this is an example of systemic discrimination?

Mr Costante: No, we don't.

Mrs Caplan: That's the issue for the debate of this committee. The issue of the principle of whether we have an example here of systemic discrimination is I think the basis of the discussion. I'm very sensitive to an understanding of the difficulties the ministry would have in making changes. Nobody ever likes to make changes, but I think the Ombudsman has made the case for a case of systemic discrimination, based on the evidence that is before us. I understand as well the differing viewpoints about what that would mean and how the rent would get paid and interfering in relationships.

My own view is that it is the role and the job of the Ombudsman to bring to this committee findings of fact, issues which the Office of the Ombudsman and the Ombudsman believe are in fact systemic, unintentional discrimination based on changes in society and traditions that have evolved over time, which the government has to address on the basis of compliance with the Human Rights Code, which says you cannot discriminate on the basis of marital status. That's the point she has made, and I think she's made her case: that the ministry, in the way it is distributing family benefits cheques, is discriminating on the basis of marital status and forcing an individual who wants access to their own entitlement to have to leave a relationship to have access to that on an individual basis.

**Mr Froese:** It this a question or a speech?

Mrs Caplan: It is a speech. In fact, it is during this time that I have the opportunity to tell the ministry both how I feel and what I have heard. I haven't heard anything from the ministry to defend the position that they don't believe it is discriminatory. I've heard that their computers are old and that people know what they're getting into and that they have to designate a head of the household, but I'd like the ministry to let me know, from their perspective, why they feel this is not an example of systemic discrimination.

Mr Costante: I think it goes back to the nature of a social assistance program that is based on a family unit. To our knowledge, this is also the practice in the other nine provinces, which run social assistance programs.

They all do it

Mrs Caplan: So your argument is that because it's systemic discrimination in other provinces, that's okay? I want you to address the issue of why you argue with the Ombudsman's finding that this is systemic discrimination. That's my issue, not that other provinces are doing it. She's identified something that she believes should be changed here because it's not in compliance with our Human Rights Code. I'd like you to tell me why you don't agree with her, not that other provinces are doing it, but based on the —

Mr Costante: Sorry, I didn't get a chance to finish. Social assistance is determined and based on eligibility of a family unit and is treated that way in all the rules and all the ways it is administered by this province and other provinces. We pay it out to the individual who is decided upon by the couple in question; it's meant for the entire uses of that family unit. We think it would be quite difficult to make the changes being proposed. I think it's very unclear from the Ombudsman's report how we would split the cheque for children. I think it's very unclear from the Ombudsman's report — or maybe it is clear — that the ministry would also have a fair amount of policy work to do in terms of deciding what happens if one of them is working part-time. If there are overpayments, how is that allocated? There are just a lot of problems with this particular policy.

Mrs Caplan: Why do you think it's going to the

The Chair: Mrs Caplan, I'm sorry. I know I said 12 minutes, but I forgot that Rosario represents a third caucus. It's really eight minutes per caucus, so it's time to move on to the third party.

Mr Marchese: Ms Jamieson talked about the fact that she had asked for some of those costs you have provided today and that they didn't get a chance to see those figures. Did they get a chance to see them eventually or finally?

Mr Costante: No, sorry; we have just done this work in the last several days.

Mr Marchese: I always find it useful when people bring a case forward and ask for that information that we try to provide it before they come here, because that's part of their analysis and it's part of their presentation. It's difficult for us to respond to those without the benefit of their analysis of how that might be either correct or incorrect or challenged by them. I just wanted to make the point that for me it would have been useful had they had that information so it could have been part of their case.

Second, you say you think it is of limited benefit to recipients should we change the system. I think the point is that once a case has been brought forward — and there are probably others of a similar kind but never brought forward — it begins to tell us that there is a problem with the system. While it may be of limited benefit, it would be important to those people who are undergoing the problem or in it to find some remedy.

The problem I have with your presentation is that you're bringing forward a whole list of possible reasons it would be complicated to do, and while I appreciate that there are some costs and that questions might arise which become complicated for the ministry, possibly the government, have some of you reflected on how we might bring about a remedy to such a problem? In the

way it was presented it would be a whole systemic change, but have you reflected on how we might remedy it in a way that may not be systemic but might bring us along towards dealing with the problem?

Mr Costante: In this particular case there were attempts to look at joint bank accounts, to look at trustee options, to look at switching the prime recipient of the cheque. I think our case workers try to deal with these situations as they arise, and the numerous other situations that happen out there.

This is a very large system. The social assistance system in Ontario still deals with a million people. They have a million different individual circumstances that we're trying to cope with on a day-to-day basis, and it's quite hard to have a rule for each and every single individual circumstance. We try to set rules which we think are fair, that are administratively feasible and that we can reasonably administer in this large a system, that has 7,000 workers, that sends out over \$5 billion worth in payments each year. We look at each case, and our case workers try the best they can to deal with individual circumstances.

Mr Marchese: I appreciate that, of course.

You say we're dealing with a family unit here and that the payment therefore is to the unit. Ms Jamieson was saying, yes, we have a unit which is recognized, and perhaps rather than treating it as common-law we treat it as co-residency and split the cheque in two.

Mr Costante: If you treat it as co-residency, there is an increased cost to the province. They'd get paid as two individuals and get the full amount, not the reduced amount that comes when two adults are considered a couple because there are assumed economies of scale and therefore a lower entitlement. That would mean quite a substantial increase in costs, if this was to be 100,000 individual cases where we'd have to do that.

Mr Marchese: The cost factor would be a problem, is what you're saying. Is it more than just a cost factor for

Mr Allan Kirk: It's more than just a cost factor. When you talk about co-residents, versus common-law, you're talking about two people who are sharing accommodation and their allowances are calculated accordingly. In the particular instance the Ombudsman is talking about, this is a couple who were together, were commonlaw, split up and came back together; it was accepted that they were common-law, and the allowance has to be calculated accordingly.

There are a couple of issues here. One is the head of the household issue. Up until about 10 or 11 years ago, the province did accept that there was a head of the household and the head of the household was the man. We stopped doing that 10 years ago. The recipient, the person in whose name the cheque will be made out, is for the most part up to the couple. There are some instances, particularly on the FBA side, where only one of them is categorically eligible and therefore they must be considered the recipient and the cheque must be made out in their name.

The other issue that was brought up by the Ombudsman was that these two people continued to be categori-

cally eligible in their own right when they became a couple. That's not true. They may each have continued to be disabled, but they did not each continue to be categorically eligible, because they were recognized as a couple. Once you become a couple and because we deal with family units, you cease to be eligible in your own right. Once they are apart, they are in fact eligible in their own right. But the fact that they both continue to be disabled does not mean they continue to be recognized as individuals when they become a couple.

Mr Marchese: In the case Ms Jamieson brought here today, are you sympathetic to the problem she presented?

Mr Kirk: I'm sympathetic to the problem that exists among couples. In a question to the Ombudsman, the former banker put it very well, that when you're dealing with couples often there are issues, and often there are issues that are difficult to resolve. The case the Ombudsman brought before you today is an example of that. This is an example where a couple is having problems, financial problems, and the solutions we are able to offer are solutions that were not working for them.

Mr Marchese: Ms Caplan has a question with my minute.

Mrs Caplan: I'd like you to clarify. What I heard you just say is that an individual loses their entitlement on the basis of their marital status. I'd like you to say why that's not discrimination on the basis of marital status.

Mr Kirk: This is a program of last resort. This is a program that is family-based, both on the family benefits side and on the general welfare side. If it were to be otherwise, if we take the example, for instance, of a sole-support parent who is eligible in their own right while they are a sole-support parent, what I hear the Ombudsman saying is that when that sole-support parent enters into a common-law relationship with someone, they ought then to continue to be considered a sole-support parent. They're not.

Mrs Caplan: No.

Mr Kirk: But they're categorically eligible in their own right when they're living in the community on their own. When they become part of a couple, that ceases, and that's —

Mrs Caplan: What the Ombudsman is saying is their entitlement shouldn't be based on their marital status. They shouldn't lose their entitlement based on marital status.

The Chair: Mrs Caplan, thank you. I turn now to the government caucus.

Mr Doug Galt (Northumberland): I know two wrongs don't make a right, but I couldn't help but sit here and think of when our children were at home and we were receiving the so-called baby bonus or family allowance cheques; they were made out to the mother and it appeared as income on my income tax form. I'm not sure if it always went to the male or if it went to the one with the higher income. It probably went to the one with the higher income, but I thought it was an interesting comparison, as you were presenting. I'm not suggesting that was right either, and I do appreciate what the Ombudsman is bringing forth, but there is another circumstance whereby we're recognized differently by gender.

I was curious about what it costs to produce a cheque.

Ms Donna Ingram: Good morning. I'm Donna Ingram, with the information systems branch. Cheque payment costs approximately, off the top of my head, about \$4 or \$5. The costs are made up of processing, cheque stock, postage, and generally there's also something else that goes with the cheque, like a benefit statement of some description.

Mr Galt: So in this case there would be some economies of scale by dividing by two and sending two cheques. It wouldn't be quite that much for an additional

cheque?

Ms Ingram: No, it would be that much because of how it's processed.

**Mr Galt:** Would there be a problem with writing two cheques and sending them in a common envelope?

Ms Ingram: Yes, there would be.

Mr Galt: This term "head of a household" kind of bothers me and I have great difficulties with that. I did pick up a little later on that there is some flexibility in the system whereby the couple may decide which one receives it. That was something I was going to pursue, but you obviously answered that.

I think the Ombudsman has a point here that I hear. At the same time, I'm not so sure her solution is going to improve — we may have as much trouble with the solution as we presently have. We may need some flexibility here if there are difficulties within the couple and they want separate cheques. Maybe we should be prepared to recognize that, but to demand separate cheques in all instances is sort of trying to kill a fly with a sledgehammer and I'm not so sure it's the proper answer. But I do recognize some difficulties.

Mr R. Gary Stewart (Peterborough): A couple of questions, and I don't mean this to sound the way it's going to sound, but I could tell you this: The difference of writing a cheque between \$4 and \$5, if I was your ministry, that would be the first thing I'd work on today, to find out how much it costs you to write a cheque, because if you're writing a few hundred thousand cheques, the difference between \$4 and \$5 represents a hell of a lot of money. If that's criticism, then so be it.

A couple of things: It appears to me that we're trying to redefine what the family unit is. Do I understand that if you were to send a separate cheque to the male and the female, the mother and the father, whatever we seem to want to call them these days, you're going to have to do the same thing to the children as well? If this was set as a precedent, is what I'm trying to say.

Mr Costante: I think that's what we're worried about, the precedent-setting nature of this, that you could see a dependent child who's 17 or 18 then wanting their

separate piece of the allowance as well.

In addition, while the Ombudsman said the intention is not that there would be an individualized base funding amount or an individualized entitlement as a result of this, I think it does lead eventually down that road where you would do an individual entitlement on people, which would be extremely expensive, in the hundreds of millions of dollars, as opposed to considering the benefit unit being the whole family unit. That's another very major concern that we have, that it's precedent setting in the direction that it heads.

Mr Stewart: Do you feel this would add to the possibility of fraudulent activity?

Mr Costante: I think it further complicates our system with additional complications in trying to administer now two benefits and two separate cheques. I think, yes, there could be more fraudulent activity. There could be more errors as well. It's just natural.

Mr Stewart: I guess the reason I'm asking about the cheque situation and the cost of it is that in this particular case here where the people were together, they were getting separate cheques. Then they became a family unit and they got one cheque. Then the person left and they go back to a single cheque; then you go back to the other. In this particular case, there could have been three or four or five different assessments and four or five different cheques being written, as I understand it, with what happened in this particular case. I guess what I'm saying is that if you write one and the family gets together and they're there forever, that is absolutely fine, but if they keep going back and forth all the time, which in this particular case it is, it becomes really costly.

Mr Kirk: It becomes complex because, yes, you're setting up different files because you're dealing with two individuals who each have a file and who each are entitled to an allowance, and when they get together you're dealing with a family unit and you have to deal with them as a family unit. And yes, if that family unit splits up again, you are in fact dealing with two individuals again.

Mr Stewart: So there's no control there. How many cases would you have a year, requests to have a change in the way you issue a cheque? Are there a lot?

Mr Kirk: It's difficult, but I think we process around 50,000 changes to allowances in any given month, something around that, so it's a bit high but —

**Mr Stewart:** I'm not talking about circumstances. I'm saying —

Mr Kirk: This type of case? It would be difficult to determine, but it's not uncommon that people move apart, move back together again. We don't keep track of how often that happens in any particular month or year.

Mr Stewart: Every hour you don't get somebody saying, "I want an extra cheque."

Mr Kirk: No.

The Chair: We have one minute left for the government side.

Mr W. Leo Jordan (Lanark-Renfrew): I have a question that I guess really goes to the Ombudsman. How many complaints or inquiries are you getting through your ministry on this issue? Is it a large number?

Mr Kirk: No. There are certainly issues that arise, as I said earlier, where family units, couples, have problems and the issue has to be dealt with and resolved. Often it is dealt with by talking to the couple about which one of them ought to be the recipient and making a change in who the recipient is. Often it's dealt with by talking with the couple and agreeing that perhaps for some period of time a trustee ought to be put in place so that the allowance is then payable to a third party until some of the issues are resolved. But to my knowledge, and I've been in the business for a long time, we don't get any large

number of requests to divide a cheque. As I say at the outset, when an application is taken and it's possible for one or the other to be the recipient, that discussion is held with the couple and it's decided on whose behalf the application is going to be taken. It can be either one in a lot of instances.

The Chair: Thank you very much. With that, we conclude the case for the ministry. We invite the Ombudsman to return and respond to any issues that arose during the ministry's case. If there are any questions, we will begin with the third party this time.

Mr Galt: What is the total time frame, Mr Chair?

The Chair: We'll sort of see how much material arises during the Ombudsman's remarks, but I would expect to keep it short.

Ms Jamieson: There are a couple of things that were raised by the ministry's presentation that I think should be commented on. First of all, I can't help but say that I think it is very close to unconscionable for the ministry at this stage of the game to arrive at the hearing and to present what amounts to unsubstantiated figures, large figures, talking about millions, which they were not able to compute or share over the last period of some considerable time.

I for one remain quite sceptical about the figures. I know that each and every day programming changes are made to computers to update. I know as government changes priorities, brings into place new programs, decides that benefits will be adjusted in some way, these all require programming changes. I would think that to comply with the Human Rights Code would be probably the most compelling reason to incur some cost to make the programming changes.

There was some discussion about the recipient for the most part being chosen by a couple. The fact is that in the absence of an agreed election, the cheque is given to the male. The fact is that when people enter a relationship which is considered common law by the ministry, because of the "one cheque per spousal couple" rule, they lose their entitlement as an individual, and that is systemic discrimination on the basis of marital status. One would argue that in this case it is also discrimination on the basis of sex because the disadvantage is for the most part borne by the woman in these relationships. This case has not been met by the ministry and this is something that really concerns me because it's a very serious matter.

The question was also raised, what about other provinces? I think the fact that systemic discrimination hasn't been addressed in other places where it may occur doesn't make our perpetuation of systemic discrimination okay. On the contrary, I think Ontario is a leader and would want to continue to be seen as a leader in this field.

I would suggest the committee might want to consider the old age security, which is a very good example where two individuals qualify in their own right. If they are together in a unit, the calculation is on the basis of the unit, which is less than what they would have gotten individually. I'm not arguing that they continue to receive what they would have gotten individually. I am saying the lesser family unit amount is perfectly justified. Just split it in two, which is what happens with old age

security. If you want to look at an organization that deals with many people and many, many cheques, there's a good one.

There was also a question raised about children and other complications. I'm not proposing a change to how one deals with dependent children. I think that again the ministry is raising the spectre of floodgates: If we go down this road, we'll be in a real mess; individual entitlement etc. I think it's no more difficult to figure out where the money goes for a child than many other factors that are taken into account each and every day by the ministry when it arrives at what's an appropriate calculation.

I am also not suggesting that there be a rule for each and every circumstance. My recommendation would have one rule for all couples, and that is one entitlement divided by two. I'm not suggesting a change to coresidency. I am not suggesting anything other than one entitlement divided by two, calculated on a family unit

Those are some of the things that I felt it was important to address in responding to some of the issues the ministry has raised. This is not about difficulties between couples. I'm not asking the ministry to become marriage counsellors; on the contrary. This is not about disagreement between two individuals living together. This is about systemic discrimination practised and perpetuated, unintentional though it may be, by a ministry of the provincial government, and it needs to be remedied.

The Chair: Thank you. I propose to allow three minutes per caucus, if that's acceptable, beginning with

Mr Marchese.

Mr Marchese: Thank you for that summary again. I share your frustration about the calculations. I really believe those figures should have been provided to you before. Even yesterday might have been useful. I presume they had those figures then.

As a former minister of culture, I found it frustrating often to deal with some of those problems, and it did happen that sometimes civil servants would bring me something at the last moment and say, "Urgent, Minister, and you've got to sign here." I remember clearly saying to one deputy minister, "If you do that again I will not sign them," because I wanted time to reflect on what I was signing. I share that frustration with you.

We're looking at, what is the problem we're trying to solve and what is the principle we're trying to deal with? I lean towards the principle of how we bring about equity to people and avoid problems as a result, rather than assuming that this is a family unit and they will solve it between themselves.

That brings its own problem, and while it carries some initial cost administratively, I believe that those questions can be solved. I think you clarified that what you're talking about is one entitlement divided by two, and it may mean less to those individuals, I think you were saying, but that's fine, that you consider it as a family unit but you divide that entitlement by two, and it's just an administrative thing to deal with.

If there are other consequences in terms of how that might affect other people in the future, they should be dealt with as they arrive, I'm assuming you're saying as well. Is that correct?

Ms Jamieson: Yes.

Mr Marchese: That's all.

Mr Jordan: I note that you go back to 1993 on this case. Have you been investigating it since that time?

Ms Jamieson: We've been investigating it since 1994. Mr Jordan: I had a problem with some of the remarks of my colleague across the way relative to the fact that his government was involved in this prior to our government. However, we're talking about figures and not coming here prepared with information. How much has it cost out of your budget, during this period of time, to investigate this case?

Ms Jamieson: I haven't made that assessment. This is what we do each and every day on many cases.

Mr Marchese: That's her job.

Mr Jordan: You still have to make it relative to how important it is to other measures that your budget is there

Ms Jamieson: Were that the case, this is an extremely important issue, because it does not only affect one individual. Even though this case comes out of one individual case, and this was first raised with us in 1993, though we began the investigation in 1994, I can say -

**Mr Jordan:** Do you have an estimate of cost?

Ms Jamieson: This being a systemic issue, these are the issues which, if raised and addressed, will remedy the process of government and ministries throughout and prevent thousands of other people dealing with the same circumstance. I think if you want to do a cost-benefit analysis, I would ask you to put that kind of a frame around it.

Mr Jordan: Do you have any estimate of what time and costs you have related to this particular case?

Ms Jamieson: No.

**Mr Jordan:** Should we not have that information?

Ms Jamieson: I don't know that it is appropriate to the consideration of this case.

Mr Jordan: The point that the couple has the right to decide whom the cheque goes to tells me there is no problem. It's in their hands. I deal with I don't know how many of these through the constituency office, and I really and truly don't recall one couple leaving that didn't go away satisfied. First of all they were getting the taxpayers' money, they were getting the benefits, they were satisfied with the amount, and when it came down to an issue like whose name shall it come in, they went away quite satisfied as long as it got to their household. So I'm a little concerned that we're concentrating on this aspect of it, that there's an unfairness here.

The Chair: Thank you, Mr Jordan. I'll give you quick chance to respond, but then we're into the Liberals' time.

Ms Jamieson: I suggest to you that you consider that the nature of relationships involving couples is such that often the woman is not going to feel empowered to disagree with her spouse in your presence, in my presence, in anyone's presence.

**Mr Jordan:** I've met some pretty powerful women.

Ms Jamieson: Yes, as have I. I'm saying that the nature of this issue, in that it perpetuates systemic discrimination, is such that it removes the power from an individual when they become married and that the ministry decides on their behalf that the cheque will go to the man.

Mrs Caplan: I just want to make a statement to say that systemic discrimination is usually unintentional. The reason you have an Ombudsman to bring forward issues of systemic discrimination is to give you an opportunity to take a look at something that is unintentional and deal with the principle and say: "That was never our intention, and we will change our policy as we can. Now that we know we're doing it, we won't do it any more." That is the whole notion of systemic discrimination.

I'm very sympathetic to the coping aspects of the ministry's case, but that doesn't have to do with the principle. When you have a problem and you agree you've got a problem in principle, you then have to find a way to work your way out of it that is practical and reasonable, based on what the costs and considerations are and how you're going to do it. But the question is, do you believe it is okay to continue discriminating when it's brought to your attention?

Here's the issue based on the principle. We've been told that individuals lose their individual entitlement based on their marital status. We've heard that from the ministry. Once you enter into a common-law relationship or get married, under the Family Law Reform Act the Ministry of Community and Social Services says to that person, "You are no longer entitled as an individual." That is clearly discrimination on the basis of marital status.

Because in the overwhelming majority of cases it is the woman who loses that status, I think it could be argued that there is gender discrimination as well. The reason you have that gender discrimination is that traditionally there is a power imbalance. I don't think there's another issue that is more divisive in a relationship than control of the resources of the family. That's a reality. It has always been a reality, and it's important that government not exacerbate that reality by interfering, and that's the case that the Ombudsman is making.

By policy you shouldn't interfere. You should let them work it out themselves. You should not interfere by saying, "The cheque must go to one and you must choose." It should be the policy that both are equally entitled. What impressed me as well was that in 82% of the cases no cheque is issued, it's direct deposit, and individuals could choose direct deposit into an individual account or a joint account and in that way make the determination in their relationship.

This is not a partisan issue. The fact that this has been going on always, through all governments, is not that it is partisan in nature or that anybody deliberately set this up to do it. It was a reflection of the times. It has now been brought to our attention, and the issue is, what is the attitude of the government towards an issue of systemic discrimination when it is brought before them?

I hope this committee will decide to listen to the Ombudsman — we've identified an issue of systemic discrimination — and direct the ministry to bring forward a fiscally responsible plan to achieve the goal of eliminating discrimination and ensure that the ministry's practices

are in compliance with the Human Rights Code. That's our obligation and responsibility.

I'd also say that if the members of the government don't feel that the ministry should be in compliance with the Human Rights Code, they should say that on the record, because I suspect that there will be those who will take this case through the courts. If you don't deal with it here, appropriately, if you think it has cost you a lot of money to this point, having the Ombudsman do the investigation, it's going to cost you a whole lot more with government lawyers fighting this case in the courts, and you're going to lose.

This is clearly systemic discrimination, and you can fix it here by making the appropriate recommendation.

The Chair: Thank you, Mrs Caplan. We will now go into closed session and consider our next course.

Mrs Barbara Fisher (Bruce): On a point of order, Mr Chair: Why would we need a closed session?

The Chair: That's been the tradition of this committee. That's the practice we followed last week and that's what I proposed off the top. I didn't hear any objection at that time.

The committee continued in closed session from 1030 to 1118.

The Chair: Welcome back. The committee, in closed session, has decided to reserve its decision on this morning's case. The committee will reconvene to consider this morning's case at the call of the subcommittee, and notices will go out to the usual parties.

Mrs Caplan: I think you should add as well, Mr Chair, for the information of the Ombudsman, that we requested that the ministry provide all the information she had requested in detail, so when we deliberate this case we'll have all the facts on what the costs would be from the ministry's perspective. We've asked that they be made available to the committee and to you so that we can have that discussion here as well.

**Mr Jordan:** On the costs of the Ombudsman on this case?

Mrs Caplan: No, this is the cost from the ministry. Mr Jordan: Well, I'm sorry, we asked for those.

Mrs Caplan: No, we did not. That was not what we discussed. That is not related to the case.

## REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair: We are now moving to consideration of the 1993 report. We have heard from the Ombudsman in her initial comments, but she now has further comments to make in accordance with the submissions she gave us in writing, and I invite her to take us through that material now.

Ms Jamieson: The last day, you will remember, I went through and grouped each of the 44 recommendations under eight themes and tried to be as helpful as possible in responding to those theme by theme to let the committee understand better what my response was.

I'm really in your hands. I mentioned a number of the 44 recommendations in those opening remarks. I'm happy now to go through each of the 44 or to respond to questions or however you would like me to proceed, whatever would be most helpful.

The Chair: The committee indicated to me in closed session that they're happy to have you take us through your points.

Ms Jamieson: Each point. Okay. I'll try not to be too

repetitive today.

The first recommendation deals with the committee considering rules to govern how I conduct investigations of a systemic nature. I made some general comments last week on rule-making and on how, generally, rules are usually so vague as to be unhelpful or very, very limiting.

I also made the comment that it has been extremely important for the public to know that I, as their independent investigator, do so without being directed by government and without being influenced by the political influences of the Legislature

influences of the Legislature.

The making of rules to determine how I would investigate systemic issues, if they're made by a committee the majority of which are government members, I believe would cause the public quite rightly to question the credibility of the Ombudsman institution as an independent one.

That being said generally on rule-making, I am going to turn now to the issue of "systemic," and we had a case on that this morning. It is a very important part of our work, for several reasons. To do reviews and to look at cases and see their systemic implications and system-wide implications really makes optimum use of resources; it helps prevent similar complaints from arising in the future, if you fix it once; and it helps us to address policies and practices that look neutral, like the case we did this morning, but in fact have a negative impact on groups of people.

It's often been argued that systemic reviews are done at the expense of individual cases and investigations. That simply is not the case. Most of them arise out of individual cases. I believe there is no need for a rule to govern how systemic investigations are to be conducted. I welcome the opportunity to talk with the committee further about how we conduct those investigations and to entertain suggestions for improvement, but writing a rule, I feel, may limit the scope of my ability to do my work and then may handicap our office in not being able to adjust to new circumstances, new twists that new com-

plaints might present.

On the second recommendation — that is, that I present as part of an annual ombudsplan "public education initiatives for each fiscal year" — I wanted to draw the committee's attention to the fact that we do report on public education initiatives every year in the annual report. We also set priorities, objectives and work plans according to our budget, and as part of that exercise we develop public education plans by geographic region. I welcome the opportunity to share those plans with the committee and to discuss suggestions for improvement. I don't, however, think it's appropriate to have them submitted for the approval of the committee because I think that is a matter for myself, as Ombudsman, to determine. That is 3(a).

I do agree with the intent behind recommendations 2, 3 — 3(a) and 3(b) — 4 and certainly 5. On the specifics:

Recommendation 3(a): We do target those groups least likely to be aware. It is accepted practice. It is a high

priority in my office. Again I welcome the opportunity to talk some more about that and to hear from many of you who may have some views on where we should spend time. We do our best with what we have to work with.

Recommendation 3(b): "That government departments and agencies be required to make information on the Ombudsman's services available at all public service contact points." I think this is a terrific idea and it would really supplement our public education efforts. It's going to be important to do it in a way that government organizations will support and that will ensure the public understands that the Ombudsman is separate from government. If, for example, you put up a pamphlet counter at each government service point, that's a terrific idea, provided it's done in such a way that people understand that that pamphlet suggesting they might want to take complaints to the Ombudsman — that the Ombudsman isn't then seen as part of a government department. The way it's done I would very much like to talk about, but in principle I think it's a great idea.

Recommendation 4: That we report annually on the activities undertaken, with a statement of objectives and so on. We do this through the annual report and I'm

happy to do more of it.

Mrs Caplan: On that one, I think what the committee had in mind was what we discussed previously, and that was an opportunity for the Ombudsman to come to the committee to discuss the annual report and answer questions, such as the specifics we've just been debating: What's the appropriate forum to ask about, what cost per case, that kind of thing.

That's all part of the annual report process, and I think part of the frustration for the committee has been that there hasn't been enough contact to be able to discuss those kinds of issues. I'm just wondering whether you feel that would be appropriate, for the Ombudsman to come to the committee with the annual report and have a full discussion on any issues members wanted to raise in conjunction with the operation of the office.

Ms Jamieson: I'm happy to come and talk about the annual report. We haven't had that chance for a couple of years running, and I would look forward to that and then answer questions on public education efforts and so on. I would welcome that opportunity. There are some areas, of course, where we wouldn't have discussions, like budget estimates and so on. Those are done elsewhere, as the member is aware.

Recommendation 5: Yes. I don't think an amendment is necessary — it's an integral part of our work — but if the act will be opened to have amendments to confirm what we already do in public education, terrific.

Recommendation 6: That a complaint be made orally or in writing, orally and then in writing as soon as practicable, and us providing assistance to members of the public to formulate complaints.

Again, while this amendment would be helpful, we do this already in practice. We take complaints in person and by telephone and, where assistance is required, we provide it so that the complaint is in writing. I see, however, that there is a service equity element to this, and I certainly think it would be helpful, though not required.

Recommendation 7: That the act be amended, and this talks about a special report to the assembly; also, there is some provision that no comments be made during the course of an investigation or concerning the merits of a complaint or for the purpose of achieving implementation of my recommendations.

While I don't agree with the recommendation as it's worded, it is an area where I would welcome discussion because I think it should be addressed, and I would go further, in fact, than the committee suggests.

1130

I have probably the most restricted act in the country when it comes to the ability to make public comment. Although I should be able to comment on ongoing investigations only in extraordinary circumstances, the fact that the act is so restrictive is almost oppressive at this stage. It would be helpful to extend the powers to comment, make more reports to the Legislature and comment publicly on matters of public importance as the need arose.

It would also be useful to be able to make special reports on any issues that relate generally to the performance of our work. Let me give you an example: the issue of privatization and the right of complaint. We've spoken out publicly on this. There may well be other issues that will arise during the course of an investigation that are broader topics that would be useful to the Legislature. The Ombudsman has the experience, and I would want to share that and speak out on the issues.

I would want that to be broad enough so we could also speak out on issues raised by cases whether or not they've been the subject of a report to the Legislature, because not every case we look at ends up in the annual report or the appendix; it's impossible. At the moment unless a case in the annual report I can't talk about it at all, and that's really restrictive.

I also would not want to be prohibited from speaking, as I have this morning, on a case and on the need to adopt recommendations. I fear that is what the current recommendation would prohibit me from doing, so I have concerns about the drafting but not the issue.

Recommendation 8: I'm now not precluded from making special reports. This amendment may provide clarity, and that would be fine.

Recommendation 9: This has to do with the interplay between the Ombudsman Act and the Freedom of Information and Protection of Privacy Act. I have raised this issue at least three or four times in my annual reports. I believe it should be addressed. I've put forward suggestions on how it might be addressed. It would be very helpful to me if the standing committee would move further than the recommendation implies and come to terms with some recommended amendments that would make it clear that third parties would not be able to access my reports.

The problem arose when an individual who was going on a court case, who was not a complainant, a government ministry or a witness in an investigation, applied for access to a draft report that I had done to a ministry. The current understanding of the FIPPA legislation allowed third-party access to that draft report. I think that's contrary to the thinking behind the confidentiality provisions of the Ombudsman Act and it should be addressed.

Recommendation 10: "That section 14(5) of the act be amended to provide that the Ombudsman may apply to the Divisional Court for a declaratory order, (a) concerning...jurisdiction" — I should let you know that there already is that provision; (a) is not necessary, it exists — "or (b) concerning the interpretation of any provision of this act."

I've not had an occasion to make such an application, but an amendment like that may be of some assistance in the future.

Recommendation 11: This speaks to amending the act "to enable governmental organizations to make payments to complainants" when I suggest that payment be made when there was an act of unfairness and compensation is due.

I can and do recommend that compensation be paid. Most governmental organizations comply without great difficulty. From time to time government organizations are unclear as to their legal authority, and it takes us longer to convince them that they have it. As a result, again I don't think the amendment is necessary, but it may provide additional clarity for some governmental organizations so that they feel comfortable in providing the compensation.

Recommendation 12: This has to do with organizations that don't already have the power to reconsider to be given that power and that proper fairness proceedings occur.

Since the report was done in 1993 there have been changes to the Statutory Powers Procedure Act, that the committee will want to take notice of, that already have broadened the opportunity that governmental organizations, tribunals, have for reconsideration, but this would be a welcome addition.

Mr Marchese: Which governmental organizations are we talking about, as examples here?

Ms Jamieson: At the moment, for example, there are cases like those complaints about the Workers' Compensation Appeals Tribunal. They have the power to reconsider already. If I find something wrong, they can correct the problem themselves. Under the Ontario Human Rights Commission they don't have the power. Their decisions are ultimately final after they've rendered a decision. While I might recommend changes to the process, I can't recommend that they reconsider. The Statutory Powers Procedure Act hasn't helped them but it has helped some tribunals, some boards and commissions, to reconsider. I run up against the case where I've found something wrong and the organization itself would love to correct it and can't because they don't have the power to reconsider. In those cases I think it would be useful.

Notice provisions and so on, absolutely, are very much in line with the fairness standards that I think would be appropriate.

Recommendation 13: This has to do with the setting out of jurisdiction in a schedule. Last week I mentioned that this is a good example of a recommendation where I think the issue needs to be addressed. I again would suggest some changes to the committee's recommendation.

I think if we were to remove the broad definition in the act at the moment, and then list all governmental organizations by name, this would not be helpful because if names changed tomorrow — we've just changed the name of the Workers' Compensation Board. You'd have to amend the schedule every time. I think it would be a wise idea to keep the general definition and make provision to add organizations by schedule. The organizations I would think of to add by schedule would be things that are not currently covered: maybe new agencies that government will create to deliver public services privately, for example. I've spoken to this in the materials I sent to Minister Sampson and copied to the committee members.

This also may be a way to add areas that are not covered at the moment where the public does not have the right to complain. Children's aid societies: People currently cannot complain about children's aid societies to an Ombudsman. Municipalities: As municipalities take on more and more it may well be, I would suggest, that the right to complain should be extended to the public about the decisions of municipal governmental organizations. Hospitals might be another area, and so on. That would provide two ways of testing whether something was within the Ombudsman's jurisdiction. I would suggest some amendment to that recommendation.

Recommendation 14: This again has to do with rules and governing how I would conduct the investigations of tribunal decisions. Last day I went through how I investigate tribunal decisions both for those that have the power to reconsider and for those that do not. Basically the difference is that if they have the power to reconsider, they have an opportunity to correct the decision, so there would be more opportunity for me to investigate that and put the issue back in front of the tribunal. If they don't, the only thing I can suggest change to may well be the process, notice, the way hearings are conducted, whether they provide interpretive services and so on.

I don't think a rule is needed to set this out. I'd be happy to talk further with the committee about how we do this currently, because we've not had that opportunity in the past. I already have made comments on rule-making in general and I won't repeat myself there, but that is one area where I have fundamental disagreement, I think, with the committee.

Recommendation 15: This is a proposal to amend the act to make it clear "that the Ombudsman does not have the jurisdiction to review cabinet decisions."

I want to be clear. At the moment I do not investigate complaints having to do with the deliberations or proceedings of cabinet. That is clear under the current act. I do, however, review the actions of public officials in implementing cabinet decisions on a day-to-day basis. That's a key feature of public administration, and I don't think any change to the act is necessary. If a change were made to include the word "decision," I would be very concerned that public officials might hold that up as a shield to prevent me from investigating their day-to-day actions in implementing cabinet decisions.

I don't think that's what the committee was after in this recommendation, but I wanted to raise that word of caution.

Recommendation 16: This has to do with changing the standing orders "to provide that the committee shall monitor and review" my exercise of my function.

This proposal is not an acceptable one. I think the right of complaint to an independent officer of the Legislature, which is what I am, provides a way for people to hold the government accountable. If the public is to see that right of complaint as a genuine part of our democracy, they've got to be assured they can make the complaint without fear of reprisal to an Ombudsman who is independent not only from the agencies complained about but from government and from the political influences of the Legislature.

Independence is a very basic tenet of the role of the Ombudsman all over the world. If this is changed so that the committee would become the board of directors and I would become its employee, those circumstances would cause the public, quite rightly, to lose confidence in the credibility of the Ombudsman institution.

Mr Jordan: How are revisions to the act accomplished at the present time?

Ms Jamieson: How are revisions to the act —

Mr Jordan: Yes. The recommendation of the committee "that the standing orders of the Legislative Assembly be amended to provide that the committee shall monitor and review...and report any changes to the Ombudsman's Act that the committee considers desirable." I think it's very important that we be able to suggest amendments to the act.

Ms Jamieson: I see. You're speaking to the second part of the recommendation. I'm sorry, I haven't gotten there, but I think it's open to the committee now to recommend changes to the Ombudsman Act. It's the "monitor and review" portion that I was responding to. I think the committee can now recommend changes to the act as can, I would suspect, other members, the Attorney General and so on.

Mr Jordan: But the changes to the act — I read it as being based on monitoring and reviewing the Ombudsman's exercise of his or her functions, and after reviewing that, then it might appear necessary to make some changes to the act. To me, they go together.

Ms Jamieson: Yes, I see that they go together in your mind. I think they do not in mine. I think there is a danger there. If you have a committee where the public sees that the majority are government members and, whether intentionally or not, they see that committee directing the Ombudsman's investigations by rule-making or monitoring and reviewing the day-to-day activities, they will see it as an open door to government interfering in the work. I think they would call into question their own confidence in the institution, and quite rightly.

I think there's a role to be played for a dialogue between myself and the committee that would inform the committee so it can consider what amendments it wants to put forward. I think that's different, but that relationship is one that I would see as more in tune with the balance of independence being respected.

Mr Hoy: I can see that this would be of concern to the Ombudsman. I guess it's one's idea of what "monitor and review" is. I think it would be helpful perhaps if maybe there were other words that could be used. "Monitor"

does for some seem to indicate that you'd be watching all of the time the actions of someone or some operation or some business. I'm a little more comfortable with the word "review" than maybe you are, Ombudsman, but the word "monitor" — I guess it's in one's mind what that means. I share your concern, your viewpoint, and perhaps there's a time when we can decide on the wording here.

I don't think the intention is to get into the operational aspects of the Ombudsman on a day-to-day or month to month basis. I think you and I seem to have some understanding, or at least I share the view you have to

some degree on this.

Ms Jamieson: I welcome that reassurance, because I had to put together this recommendation with some of the others. As I said, I did it in themes. If you put it together with some of the other areas, it is very clear that it is a board of directors relationship that's envisaged, and that's what's not acceptable. The dialogue, working cooperatively, the sounding board, the opportunity to discuss and to review together issues that are in the public administration that cause unfairness — absolutely. That relationship is one I look forward to enhancing. I just want to be clear with that.

Recommendation 17: This has to do with amending the act to require my attendance at meetings of the committee. I think this is a good example of a recommendation that maybe has to do with another time, another day. In fact, I welcome the chance to meet with this committee. I've sought opportunities to do so. It's only in the most extraordinary of circumstances where any Ombudsman would be unwilling or unavailable to meet with the committee, and it's very difficult for me to see what would be the point of an amendment that gave the committee the power to compel me to come. That really alters the relationship we have, and I would not support that.

**Mr Jordan:** On that point, over the last five years we did experience difficulty in finding a time that was suitable, that you would come before this committee. This committee threatened to dissolve because of that.

Ms Jamieson: If I can review for the member the history —

Mr Jordan: I was here. I know that the report we got back was that the Ombudsman was not available to come before this committee. I'm sure there are other people here who are aware of that. There is a reason behind this number 17. It wasn't just written out for — there was a good reason at the time.

Ms Jamieson: As I've said, I think this has to do with another time and another circumstance. I think you will have seen me seek and be willing to appear at committee recently, and very willingly. It would be extraordinary. If I'm unavailable, it depends — I would not make myself unavailable, but if I were engaged in other things, just as members are, it may not always be possible. The only experience in the past where I was unwilling had to do with the change in agenda. I'm happy to review that in detail, but I don't think it would benefit us.

Recommendation 18: that the terms of reference be included in the Ombudsman Act. That has to do with pulling up the terms of reference that are in your recom-

mendation 44 and putting them into the act. I think to accomplish that, given the nature of what's in recommendation 24, would alter the act fundamentally. It would change, because recommendation 44 does envisage a board of directors relationship. It does envisage "to inquire into and report on any matter which the committee believes should be..." It does use the words "to monitor and review the Ombudsman's exercise of his or her functions." It does include reviewing and altering the estimates. It does include reviewing and considering the audits.

It includes some good things as well. The good things are the legislative link and the sounding board, which I welcome. I think that exists already. So there are some good parts.

But I will say that there are parts in 44 which make it unacceptable to me and thus I would not support an amendment to the act to bring it forward. It would fundamentally alter the act. To return to the board of directors analysis, that is exactly what it would do. The Ombudsman institution would no longer be independent or able to do its work with confidence from the public, and that I cannot support.

Mr Jordan: Mr Chair, do we want discuss this as we

o along?

**Ms Jamieson:** I'm happy to stop any time and entertain questions.

The Chair: I'm in the committee's hands. I'm just mindful of the clock. If you have discussion, proceed. Go ahead. I haven't stopped anyone yet.

Mr Jordan: You're adjourning at 12, you said?

The Chair: Oh, yes.

Mr Jordan: I'm concerned that the reasoning behind recommendation 44 is being broad-brushed here to the extent that I'm not clear why you feel that if recommendation 44 and the different parts were to be implemented, it would take away from your — wouldn't you feel more comfortable with this, that there was a certain amount of monitoring in a democratic manner taking place and being reported to the Legislature, rather than your digging yourself, which is possible, into a circumstance that would be detrimental? We're only individuals, so at some time, somewhere, we're monitored.

I can have my constituent come back into my office and tell me they've dealt with you and they're not very happy with the result, or they can tell me they're very happy with it. So the confidentiality of your decision is open to the person who received it.

I'm just saying that when we drew up these recommendations, a lot of thought went into it.

Ms Jamieson: You're asking me for some more clarification on why I've said it's unacceptable. For me it's very simple. I have a responsibility to be accountable — and I am fully accountable — and the act is very clear how.

**Mr Jordan:** To whom?

Ms Jamieson: There are two points of contact that I have with this committee. One is the annual report, where there's ample opportunity to discuss its contents. The other is on the cases, the recommendation-denied case that came forward to you today. On the financial aspect,

I am accountable for my estimates and so on to the Board of Internal Economy.

I am also accountable to the public, and that accountability to the public requires me to defend the independence of this office. It is that independence that is being compromised and eroded if recommendation 44 were to be put into place. It would open the door. I'm not saying the member is looking to do this; I am saying, though, that the public would see, and I think rightly, that the door would be open for a committee, the majority of which are government members, to control the investigations, the finances, the day-to-day workings of my office, and they would —

Mr Jordan: If you're taking that view, maybe I —

Ms Jamieson: — if I could just finish — lose faith in the credibility of my findings. They need to have faith in the credibility of my findings to believe that I have truly, independently investigated and arrived at those findings without being directed by government.

Donald Morand, one of my predecessors, said, "He who controls this, he who pays the piper calls the tune." The more the committee were to become involved in the day-to-day actions of my office, the more people would be drawn to reach that conclusion. That's the fundamental difference.

Mr Jordan: Your assessment of this committee and my assessment are widely divided.

Ms Jamieson: I have not made an assessment of the committee, I've made an assessment of the recommendations.

Mr Jordan: You're making an assessment of the committee in my view, when you see a problem with 44, that you don't have the confidence to report, as requested here, to the committee. We've gone through this now for three years that I'm aware of, over this conflict of: "How much should I communicate with the committee? Should I communicate with them at all? I report my budget to

the Board of Internal Economy. I will talk to the Premier." But where does my monitoring come in if you're not going to allow this democratic committee — we're all elected the same way here by a vote and we have to be responsible to our constituents. So I have trouble with your not accepting 44.

The Chair: It's noon. I will allow the Ombudsman a chance to get the last word on this point, then we'll close the discussion for the day and adjourn it to another day. There's one motion that we must entertain before we

break, though.

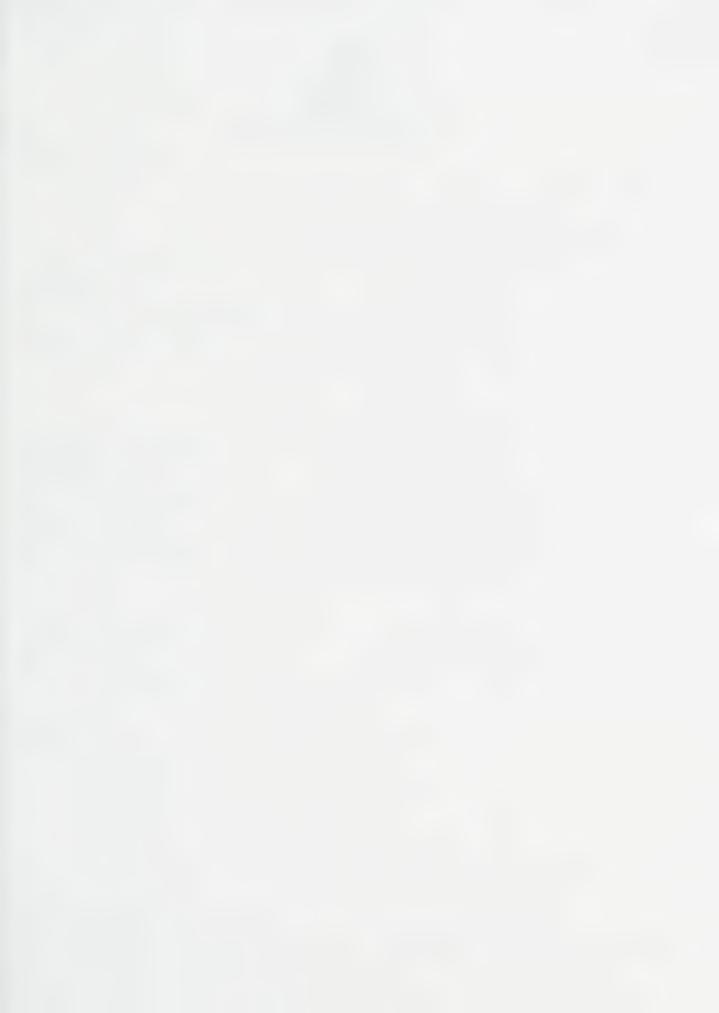
Ms Jamieson: I just want to make it clear that there are lots of opportunities in the recommendations and the discussion for both of us to work together to enhance the role of the Ombudsman on behalf of the people. There are some areas where I've mentioned that I disagree. I look forward to working with the committee on the areas where we can move forward, but I will say, as I have said before, I remain firm on my obligation to defend the independence of the office. I make no conclusions about the motivation behind any committee. I'm simply raising the cautionary flag that the public expects me to raise when the independence, which is the key to the public's investigator, is put possibly in jeopardy. It's that spirit that I've brought to these discussions. They are a dialogue, and I welcome that.

The Chair: Thank you very much. This process is adjourned until a future time at the call of the Chair.

I now draw the committee's attention to the draft report arising from last week's proceedings and I am prepared to entertain any motions.

Mr Froese: I move that the Chair be authorized to report to the House with respect to the CAP program.

The Chair: All in favour? Opposed? Motion carried. Thank you very much. This meeting is adjourned. The committee adjourned at 1201.



## **CONTENTS**

## Wednesday 4 December 1996

Case of Ms C  Ms Roberta Jamieson, Ombudsman  Ministry of Community and Social Services  Mr Kevin Costante, assistant deputy minister  Mr Allan Kirk, manager, social assistance programs branch  Ms Donna Ingram, manager, information systems branch			
Review of the Office of the O	mbudsman		
STAND	ING COMMITTEE ON THE OMBUDSMAN		
	Mr John L. Parker (York East / -Est PC) Mr Tom Froese (St Catharines-Brock PC)		
*Mr Carl  *Mrs Barbara  *Mr Tom  *Mr Doug  *Mr Pat  *Mr Leo  *Mr Jean-Marc  Mr Rosario  Mrs Margaret  *Mr John L.  *Mr R. Gary  *Mr Bill	Caplan (Oriole L) DeFaria (Mississauga East / -Est PC) Fisher (Bruce PC) Froese (St Catharines-Brock PC) Galt (Northumberland PC) Hoy (Essex-Kent L) Jordan (Lanark-Renfrew PC) Lalonde (Prescott and Russell / Prescott et Russell L) Marchese (Fort York ND) Marland (Mississauga South / -Sud PC) Parker (York East / -Est PC) Stewart (Peterborough PC) Vankoughnet (Frontenac-Addington PC) Wood (Cochrane North / -Nord ND)		
*In attendance /	présents		
Clerk / Greffière:	Ms Lisa Freedman		
Staff / Personnel:	Mr Andrew McNaught, research officer, Legislative Research Service		

B-7

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## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 22 January 1997

Standing committee on the Ombudsman

Case of Ms C

Chair: John L. Parker Clerk: Lisa Freedman

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Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 22 janvier 1997

Comité permanent de l'ombudsman

L'affaire Mme C



Président : John L. Parker Greffière : Lisa Freedman

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 22 January 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 22 janvier 1997

The committee met at 1008 in room 151.

#### CASE OF MS C

Consideration of the Ombudsman's case report in the matter of Ms C and the Ministry of Community and Social Services.

The Chair (Mr John L. Parker): Now that we have Dr Galt in the room, I'm happy to get started. This is his last meeting with us. I wouldn't want him to miss a minute of it.

There are a few items of housekeeping I want to get through before we get into the proceedings today. The matter on the agenda this morning is to return to the case of Ms C and carry that through to its conclusion. The Ombudsman has told me she's prepared to return after that to consideration of the 1993 report.

We don't know yet whether we'll have time today to do that, but you will recall, the last time we considered the 1993 report, the Ombudsman was taking us point by point through her response to the points in the 1993 report. We didn't get all the way through that. She's happy to pick up where she left off and resume that discussion today if there's time after we've dealt with the Ms C case.

That's a matter this committee may have some views on, whether you're prepared to do that or whether you want to leave that for another day. I suggest we discuss that at some point this morning, but the main point here is that she's prepared to carry on with that discussion if there's time this morning, if there's willingness on the part of the committee to do that. I'm not proposing to discuss that right now but I am raising it now with the proposal that we discuss it later, once we know what time we have after Ms C.

We will also have to deal with the matter of a subcommittee change, with the departure of Dr Galt and his position on the subcommittee therefore becoming vacant, but we'll leave that till the end.

Right now I address us to the matter of Ms C. You will recall that we have heard submissions on this matter, that we considered those submissions and the committee came back with the request for some more information from the ministry. The ministry has now provided that information in written form.

The ministry representatives are with us today to assist with any questions the members of the committee may have on that material. They tell me they have no intention of making a presentation per se, that they're prepared for the report to speak for itself, but if there are questions, they are prepared to appear before us this morning and answer those questions.

The Ombudsman is also here this morning, and I think it's only fair, since the ministry has given us some more material, that she have an opportunity to respond to that material herself. After we've heard from the Ombudsman, it's my suggestion that we then follow the custom of the committee and revert to closed session and consider at that point what our next steps will be.

I return to my main point, that the ministry has submitted fresh material to us. Each member of the committee has a copy of the ministry's report.

I now open the floor to questions from the committee of that report, if there are any, and as I say, the ministry is here to respond to them. My question to the members of the committee is, are there any questions arising from the ministry's report?

Mr Pat Hoy (Essex-Kent): Good morning, everyone. We have looked over your report and the costing you would relate to the changes that are proposed by the Ombudsman. Are any aspects of these changes anticipated regardless of the decision of this committee? In other words, when we last met you said that perhaps there would be, down the road, system changes as far as computerization goes. The question is, are some of the changes that are anticipated put forth only to build your case against the Ombudsman's request?

Mr Kevin Costante: My name is Kevin Costante. I'm the assistant deputy minister of social assistance and employment. On the very last page of the report we noted that we are in the process of and are about to sign a contract for a new computer system that would be available in late 1998 or early 1999 and we would start implementing then. The province-wide implementation would then take a little while after that initial start date.

Essentially we noted that the one-time computer costs that are related, for the other systems on the previous pages, would not be incurred, because we would just put these requirements as part of the new user requirements for the new system. The costs that would be new if you went with that option, as opposed to trying to make changes to our current system, would be reduced and you would have continued, ongoing costs of about \$284,000 a year. All the development costs, the cost to change the computers, wouldn't be incurred if you put them as part of the requirements for the new system.

Mr Hoy: Thank you. You may have answered my next thought: If this proposed change were to be implemented, are you saying you could do it by 1998 or 1999?

Mr Costante: If we were to put it in the new system, it would be part of the new system, and we're going to have to lay out the thousands of user requirements for the new system. These requirements would simply be em-

bedded in that new user requirements document, if the committee decides that we're going that way.

Mr Hoy: If you made this change, do you think it would run more smoothly than the changes made to the family support plan?

Mr Costante: I'm not going to comment on the family

support plan.

The ministry, in implementing this new computer system, is doing a very extensive job in terms of implementation planning and contingency planning, and we expect it to be implemented extremely smoothly. One of our foremost concerns is that there is no interruption of service to clients. This is a very critical program and we

will treat it very tenderly.

Mr Jean-Marc Lalonde (Prescott and Russell): I definitely have some doubts when we say we will install a new system. As my colleague just said about the family support plan, even though it was supposed to be a new, centralized system it's a heck of a mess and nobody can sort it out, at the present time the same day. I have some doubts about what the government could do to improve the situation at the present time.

Mr Len Wood (Cochrane North): Just as a follow-up there, it sounds like the support system was changed and that one system was destroyed before the other one was up and going. It looks like it's going to take another couple of years before all the bugs are ironed out of that system by shutting down all the regional offices. If the same situation were to happen here, we'd end up with another jigsaw puzzle that could go on for a couple of years. I know you're saying it should go smoothly, but we were told that on the other system and it's still not going smoothly. I'm concerned about how we can guarantee that if you go to a new system, that there are

The Chair: I take that as an editorial comment. I don't know if a response is requested of this ministry on that

point.

Mr Len Wood: It's not really a question. **The Chair:** Do you have any questions?

Mr Len Wood: No.

The Chair: From the government side?

Mrs Barbara Fisher (Bruce): I don't know if it's a matter of a question or a comment. I think I'd prefer to make it as a comment.

Part of the discussion at the last meeting was not only with regard to cost and the transition and whether it was doable or not. On a personal basis, from my perspective, I think that's a secondary issue. It's important and it needs to be considered. I think there has been a lot of work done to provide the information for us and answer some of those monetary questions, but I think it's deeper than that. The primary issue, from my perspective anyway, relates more to the question of why we are doing this, why we are even considering this, and I think we have to look at the issue of differences in philosophies and how we agree or disagree with what a family unit should really be.

The Chair: Mrs Fisher, I'm going to ask that all caucuses keep their focus today on the content of the report. There will be time for discussion of the full spectrum of issues raised by this case when that time comes, but right now the ministry has submitted a report in response to specific questions from this committee, and I'm asking all members to confine their remarks to the content of this report at this time.

Mr O'Toole, I'm sorry I failed to welcome you to the

committee earlier this morning. Welcome.

Mr John O'Toole (Durham East): Thank you very much, Mr Chair. It's a pleasure to be on your committee. I hope you meet more frequently than you did last year.

Just a quick question to the deputy minister with respect to the breakdown of ongoing costs, I gather the mailing: What's the benefit of direct deposit? Isn't there a bank charge for direct deposit?

Mr Costante: The benefit of the direct deposit –

Mr O'Toole: I like the benefit of it, but the cost of it is what I'm really interested in knowing.

Mr Costante: Sorry. We don't have that number with

Mr O'Toole: I remember when I was a regional councillor and I sat on health and social services it was continually argued that social assistance should be direct deposit because there are lots of lost cheques and questions about whether they got them and all this kind of stuff that's not too easily proved. Is there a preferred view from the ministry, without any politics, of which is the most efficient, reliable, accountable, blah, blah, blah, system?

Mr Costante: Our preferred approach is direct deposit. In the family benefits program we've had quite an emphasis on this. Over the last few years, it went up over 80%.

1020

Mr O'Toole: Yes, I know. That's why I'm asking. I'm wondering if you could get that information for the committee without too much trouble.

Mr Costante: Sure.

Mr O'Toole: Is there a bank charge or not? That's kind of a yes or no.

Mr Costante: Yes.

Mr O'Toole: That presumes a lot of other costs go away. If there aren't statements — there are the annual statements — but if there are no printed cheques, stamps, somebody sorting it, all that kind of stuff, if it's purely an electronic thing, I think the \$264,000 could be somewhat

Mr Costante: While it's direct deposit of the cheque, we still send the recipient a statement each month, so there's still the costs of that.

**Mr O'Toole:** That's something else, but that's another question I have for another day. The bank also issues statements, so how many statements do you need?

The Chair: Thank you, Mr O'Toole. I knew we'd be

glad to have you on this committee.

Mr Doug Galt (Northumberland): The issue seems to be whether the cheque should be split and each of the spouses receive a respective cheque. As I understand, presently direct deposit can be made into joint bank accounts and cheques can be written to both of the respective members of that couple. I'm struggling with this. In this case they both have access to that money. I can't sort out in my mind that there's an advantage to split cheques versus a joint cheque or deposit into a joint bank account where both can draw from. Do you follow the question I'm struggling with, one advantage over another?

Mr Costante: The clients have a number of options. As you mentioned, when the clients apply for welfare they can decide who is going to be the recipient and thus who receives the cheque. That's one option. Another option is having a joint bank account and the money being deposited in that bank account; a joint bank account, so there's joint access. That is another option as well.

The ministry has concerns about the direction of this recommendation. I think we also have concerns on the administrative side and the increased administrative burden of splitting the cheques. We've shown some of the costs here and some of the added complexities that result from that. Our preference would be to continue with our current practice as opposed to splitting the cheques and incurring that cost and the other downsides that are associated with that proposal.

Mr Galt: What I'm struggling with is that if it's going into a joint bank account, and that's one of the options, and if that's the option selected, then both spouses should have equal opportunity to the funds that are in there. My understanding is that this was the whole thrust, the whole concern of this coming before us.

Mr Costante: I'm assuming so. I'm not sure what the circumstances are in this particular case. They may not have it in a joint bank account. Whether it's a joint bank account or not is up to the individuals involved.

**Mr Galt:** But that is a choice they could ask for. Does it require both to agree or is there an automatic direction that it would go if one doesn't agree?

Mr Costante: I believe both would agree, but I should check that.

Mr Allan Kirk: Allan Kirk, manager of program design and accountability in the social assistance programs branch. At the time the couple apply for assistance, the choice is given where it's possible for either one to be the recipient. There are also other choices that are offered to the clients at that time, and one of the choices would be, do they want the money deposited in a joint bank account? The decision would be up to the couple whether that would be the case. If they chose that, then certainly that would happen and it would give them equal access to the allowance.

**Mr Galt:** I guess I was really asking, if one of them won't agree, how does it default?

Mr Kirk: They have to agree that one of them is the applicant and one of them is the recipient. During the application process often that decision may be made quickly. After that decision is made, if there are obviously problems once the allowance is in pay, then there are certain options that can be discussed with the couple. One of the options, if they are both eligible to be recipients, is that the other one becomes the recipient and the former recipient becomes the spouse, or that we perhaps use a joint bank account, or ultimately if one spouse is not eligible in their own right to be a recipient, we can make them the trustee and then the allowance would be paid in their name for the couple. Those are the options that are available to the couple or to the ministry in those excep-

tional circumstances where we have issues with paying the allowance to one person.

The Chair: Upon reflection it occurs to me that I may have cut off Mrs Fisher before she was able to establish how her line of questioning linked into the report, so I want to give her a chance to carry on her line of inquiry.

Mrs Fisher: I appreciate that. I guess it stems out of the fact that I considered it to be part of the report. Certainly in the first two summary pages, on page 2, at minimum two introductory paragraphs on that page, and probably three, relate to the issue I was trying to raise. It also falls back to some of the discussion that raised the request for additional information from the ministry at the last meeting as well.

It comes to the point that I was trying to differentiate two issues that were being dealt with which are both related to in the response from the ministry. I was saying that on a personal basis I would like to express my opinion as to what priority of significance those two issues have. I think the first one really deals with what raised the demand for further financial information, and that was the question of what's a family unit and how should a family unit be treated when it's in receipt of benefits.

That's where I was going on to explain my opinion with regard to the significance of philosophy and where you go from this. If the question is, do we now redefine a family unit for the sake of cutting cheques for social assistance recipients and family benefits and potentially other things as well, then I think the argument that needs to be had at this table is how we go from there.

On a personal basis, I would like to express my opinion that philosophically I am probably as far away as I can be with regard to what would drive this thing to create separate chequing. That's because I think we've meandered away from our responsibility wherever it plays in a family role in defining what that family unit should be. Again, this is a personal expression, but I do believe it would be one more wedge, if you will, of driving a family apart in allowing this to happen. It just leads from one thing to the next to the next that I don't think are conducive to keeping families together.

As a matter of fact, we've gone too far in being allowed to drive them apart. I think one of the ways of making some coherency to a family unit is not to be deciding on financial matters that drive them apart. If we start cutting cheques this way, where does it end? Does it end with the three dependent children, two of whom are with the mother and one who is with the father, in different locations, each on their own having a right to challenge whether or not they also should be issued their entitlement of their portion of that cheque because they have parents who have the ability to be paid an amount of funds to keep themselves in wellbeing?

Philosophically the whole question we're here about today is where we place that definition of "family unit." I would vote against, when it comes to that point, supporting the division of cheques for the purposes that have been outlined, because of the fact that nowhere are we making that family unit responsible for its decision to take care of itself as a unit. I think we're not doing society a favour at all if we take that run.

1030

Mr Lalonde: I have a question that concerns me and I think would concern a lot of people. At the present time, when we are talking of equal access to any deposit that is done towards the family, when it comes down to the rent or the hydro, would your system allow for the fact that someone would get the total cost or the total allotment for the rental?

Mr Costante: How our shelter component works is that essentially we pay actual costs up to maximums and the maximums vary, based on family size. In the general welfare program there is a capacity, with the approval of the municipal welfare administrator, to pay that rent directly to a landlord or the hydro directly to Hydro. In the Family Benefits Act — these are old acts; I think the Family Benefits Act goes back to 1967 — we don't have that authority, so in family benefits we can't pay directly to landlords or Hydro in that program, but we can in GWA.

**Mr Lalonde:** How would it be handled then? Are you going to give half of the rent to one person and the other half to the other person?

Mr Costante: We would have to split the cheque in half.

Mr Lalonde: If one of the two doesn't pay the rent, you'd throw the wife out or you'd throw the man out?

Mr Costante: That's one of the dilemmas that this proposal presents. The proposal by the Ombudsman is we split the cheque in two and give half to each. There are obviously procedures and policies that would have to be worked out as to how we would handle a rent-direct situation. I don't think I have the answer here immediately.

Mr Lalonde: I think we have a justice, a court system that would allow this at the present time. I am in agreement with Mrs Fisher. There's a lot more to think about than just talking of splitting the allotment. In the answer I got it's not clear at the present time, because that hasn't been looked at, if we ever decide to go that route.

The Chair: Thank you, Mr Lalonde. Any further questions? There being none, thank you, gentlemen, for appearing before us.

Please welcome the Ombudsman.

Ms Roberta Jamieson: Bonjour, sago, good morning, Happy New Year. This is our first meeting in this challenging 1997.

I don't have extensive comments to make to the committee, but there are a couple of things I think bear emphasizing. That is that what we currently have in this province with this ministry, the Ministry of Community and Social Services, is a practice that is systemically discriminatory, pure and simple.

There's a Family Benefits Act and under that act, unless the woman is able to gain the agreement of her spouse for the cheque to be issued in her name, the ministry issues the cheque to the man for the total amount. This is the reality in 72% of the cases in this province.

Now, I'm not saying it's intentional discrimination. It isn't. That is what systemic discrimination is about. It's about attempting to treat people equally, but ending up with a situation that disadvantages a particular group of

people. In this case, the group of people are women who are married or living in a common-law relationship with someone who is also entitled to family benefits.

The question was asked about joint accounts and how does it default and so on. The reality is that unless the woman who carries this unreasonable onus, and I would say it's a burden, of having to convince her partner that they should have a joint bank account or that the cheque should be written out to her, the ministry makes the cheque out to the man. That is systemic discrimination. It is in violation of the Human Rights Code and it ought to be remedied.

The way I've suggested it be remedied is that the cheque for the total amount for the family unit — I am not questioning "family unit" and I am not questioning the calculation for the family unit. I am saying the cheque that's calculated for the family unit should be split in two and the people who are entitled in their own right should receive the benefits. "How would you pay the rent?" Mr Lalonde asks. "How would you ensure that?" The same way that two working people figure out who's going to pay the rent. The same system that applies to them should apply to people who are receiving their income source under the Family Benefits Act.

The ministry has gone away, at your direction, and calculated the cost of doing this, both doing it now and doing it under their new system, which they advise is coming into place in some two years. They provided those figures to both you and me a week ago. My staff have met with them to get some clarification on the figures, and while I've not done a detailed investigation of every last figure in the document, I have no reason to conclude that they are wrong. So I don't have any comment to make on the figures themselves.

What I can say in summary is that not to address this situation is to perpetuate systemic discrimination by one of the ministries of our provincial government. That's an issue I've found. That's my responsibility as the Ombudsman in examining the complaints. I've brought it here in front of the committee. It's for the committee to conclude how you best want to remedy this, including when. That's all I have to say, but I'm pleased to respond to questions.

**The Chair:** Thank you very much. Are there any questions?

Mr Tom Froese (St Catharines-Brock): You would agree that when anybody applies for benefits through social services, in this case particularly, there was a choice at the outset, right? There's a choice of who the benefits are paid to on the application. In a family unit situation, they can determine which individual gets the funds. That's on the application, right? There's a choice. Would you agree?

Ms Jamieson: Yes.

Mr Froese: So if the spouses or partners in a family unit choose who is the applicant — or actually the benefits probably determine who the applicant is in different situations. I don't really want to get into that, but there is a choice who the benefits are paid to, correct? It could be the male or the female. The ministry isn't saying that it's got to be the male. It's the choice of that family unit coming in, correct?

Ms Jamieson: The reality is that the ministry, in the absence of the male's agreement that it go to the woman, writes the cheque to the man. We can say that's a choice; I'm not certain it's a genuine choice. We both know and we talked last day about the reality that in 72% of the cases it goes to the man. We talked about the need to acknowledge and recognize that there are power imbalances in many situations and the fact that it is not an easy task for many people, many women who are in a situation where they don't have equal power in the relationship, to gain the agreement of their spouse to have that cheque come to the woman, or to go to a joint bank account indeed.

My concern is that in the absence of that, the ministry makes the choice and the choice is that it goes to the man. That's the part.

Mr Froese: I probably think differently than you do on it. The problem is that we've got circumstances here where a problem has resulted or a dispute has resulted after they received the benefits, but I'm talking about initially when they come in. The ministry makes no decision other than discussing which applicant would — the family unit comes in, as I understand it, and they determine who the applicant is based on the benefits in that family unit. That can be a determining factor in who the benefits are paid for, depending on those circumstances. But in every case where that isn't the case, it's a choice of the couples coming in of who's going to receive the benefits between the couples, as I understand it, and we'll probably agree to disagree on that. But that's how I understand it.

#### 1040

The other thing is, you talked about the rent. Mr Lalonde talked about how the rent's being paid and all that. Your one comment was that you assumed there would be a choice between the couples in how they determine how that rent is paid. Why would you say that comment and yet say you've got a problem that it's not a choice when you receive the benefits?

Ms Jamieson: Well, you've hit the nail right on the proverbial head, because in that case they would each be receiving their benefits; they would each have the benefits in their hands. They would each be equally empowered. Then they would work however they wished to work as a couple to meet their debts, as we all do. The problem is that in this case that is not what happens, and it's not a matter of personal disagreement. It is a matter of fact that if the man does not agree that the cheque goes in his female spouse's name, it comes to him. That is what's wrong here.

Mr Froese: So if the policy was changed and you had children under the family benefits come to you, you had a case and a complaint that, "The benefits should be paid to me. I think it should be split because I've got a dispute with my parents," or whatever, where would you stand on that issue?

Ms Jamieson: In the original case report it's my suggestion that the benefits be split according to the custody arrangements, and that can be determined.

Mr Froese: But doesn't the child have a legal right then? If we change the policy, wouldn't the child have a legal right to get the benefits paid directly to them if they're over the age of 18?

Ms Jamieson: I haven't looked at that case in this investigation, and you might want to think about that further, but that is not what I'm suggesting today. I'm not suggesting that what I'm putting forward leads automatically to that result. I am saying that if there are children in the relationship, their benefits should be paid to the parent who has custody.

The problem here is that it's not fair to pay someone's entitlement to somebody else, and that's what's going on here. You're paying the benefits that the woman in and of herself would be entitled to if she were outside the marriage. When she comes to the marriage, that's gone.

Mr Froese: Isn't that exactly the point? The point is that if they're in, that's the whole part of the program. If they're in a family relationship, there are certain benefits. If they don't want to be in that relationship, then let them apply for single and it will be paid directly to them. This is a case of a dispute between two partners, not a ministry's problem, as I see it.

Ms Jamieson: I'm not being clear. Let me try again. This is not about a dispute between two partners. This is about a practice which says that unless the woman can convince the man to put to the ministry his agreement that the cheque goes to her, the ministry takes the action here, and the action the ministry takes, which is systemically discriminatory, is to write the cheque to the man. That's the point.

Mrs Fisher: Just a couple of points. It's my understanding, and we've all had some time to do some homework on this, that in fact it is a matter of choice; it's not a question of whether we agree or not, is there choice or not? The applicant is the person who gets the first choice at signing, and the bottom line here is that on a long-term basis, the benefit is not paid to a family unit unless two signatures appear on that contract which is entered into between the ministry and a family unit where there is more than one person living in that situation. "Family," again, doesn't just have to be spouse; it can be child as well.

What I'm getting at here is that the choice comes at the point of application. What was indicated to us, and I would ask for clarification if it's possible — I'm not positive here on the protocol and when legal counsel from the ministry is allowed to reappear or do whatever, but to clarify a point of discussion here, my understanding is that the choice is made at the time of signing on between two parties in a relationship of adults, whether they are married or not: the common-law relationship or the marriage situation. The choice is made at that time of who will be the applicant and who will be the spouse or the other partner, and the spouse also has right to trusteeship of that account when and if in fact it's abused, when a whole other set of rules can click in. Somebody then can ask for direct payment of such things as rent to take care of the problem even in the situation where it's a combined payment to a party. In the event that it was split, it would be even more of a nightmare, quite frankly, because we might have one responsible party who is recipient of half a cheque and another who says they're going to be but aren't, and how do you chase that out?

I'm not positive we're helping anybody by doing this. As a matter of fact, I think I'll come back to the point of destroying the family unit. I don't believe that government has a responsibility in, nor should it interfere with, the decisions between those partners. If they have the right of choice at the time of signing, quite frankly, then they must be responsible for the decision that's made at that time.

I recognize you state the figure of 72% that are ultimately signed with the recipient being the male of that partnership. Maybe that's a decision that's been made. I'm not so sure that tells me that somebody has been forced upon because that's the decision that's been made. Let's assume for a second that, of the 72%, a significant amount was agreed upon anyway. Where does that become a systemic discriminatory problem for either partner? In this case, you're raising the case for the woman, but where does it become that just because 72% agreed it would be the male? That statistic doesn't tell me that that was in disagreement. That statistic tells me that's what happened in contract, and that decision had to be made in the household, however you want to define that, prior to getting to that contract being signed. I grant you that there are some cases, especially in the case of Ms C, where you are able to identify that somebody has a problem with that, but maybe the larger percentage of that or the majority of that, 70% or whatever the number might be, is what was agreed upon, and it just turns out that 72%, or the biggest part of that, agreed that it should be the male.

I find your statement contradictory when you say that, well, once the cheque is cut, it's really not our problem any more. I find it contradictory that you say that just like in the working couple's income, they then can decide who pays the rent. How can we have it that the cheque coming in is any different from how it goes out if in fact the problem is the responsibility of payment from the revenues from the cheque? I'm trying to be sympathetic to your argument here, but in listening, it tells me that it's okay on the incoming thing that it be separated, but after that it's not our problem or it's not our concern. Yet ultimately, quite frankly, the woman in this case could be worse off if that half of that rent on which maybe she had a little bit more influence on how it was spent is immediately spun off to a male cheque. How do you then track that other half of that rent that's necessary to be paid? I think we've probably doubled the problem potential instead of eliminating the problem.

The one question I have before I finish is — no, it's not a question; it's a statement. I do not believe that government should be interfering with personal decisions within a household and that we are driving apart the definition of "family unit" by allowing that to happen. Therefore, I personally cannot support this.

1050

The Chair: Thank you. Any response on the part of the Ombudsman?

Ms Jamieson: Yes, on a number of things that were raised.

One, what's the difference between saying there should be a role in how the money comes into the relationship as opposed to how it goes out? Quite simply, it's because this cheque is drawn by government that I got involved in this case and why it's here now. I have no views to present to this committee in my role as Ombudsman about how people manage their money after the fact. I have found that government, in cutting one cheque to a family unit, is perpetuating a practice that is systemically discriminatory. That is why I focused on that piece. So that's the difference.

I think there's been a lot made of the issue of choice. The reality here is that the ministry makes the choice in a way that disadvantages women unless the male agrees. The ministry official, during the conduct of the investigation, said, and I quote: "Historically, the cheque has gone in the man's name (I hate to say it). Sometimes a man will ask to have the cheque in his wife's name." That's the reality.

We can all speculate what happened in those 72% of the cases. It may be that in the majority of those cases there was no agreement, as in the case of Ms C. She did not agree. The cheque went to the man. And what happened to Ms C? Ms C was left with the bills and no funds at the end of day. The situation that was allowed to occur here put her at an extreme disadvantage, whereas if she had received the benefits — and here's the key to which she was entitled in her own right, she would have had the power, the authority that goes along with the use of those funds. That's what's at the base of this case and that's the issue, I think, that remains for the committee to deal with. It's not about family unit; it's not about family values. It is about systemic discrimination by a part of our government, and that's why, as Ombudsman, I feel it needs to be remedied.

The Chair: I saw Dr Galt's hand.

Mr Galt: What I'm struggling with — we'll say we did agree with you and separate cheques are to be issued and that's how it is in this wonderful world we have. There's still coercion and we haven't got over that. If one spouse is going to force another spouse, I don't see that that spouse is going to have all the power that you're suggesting is going to allow separate cheques or going to insist on a separate cheque coming to the one with the most power, whether it be male or female. So I'm sitting here and what I'm struggling with is the disagreement to overcome the systemic discrimination you're concerned about.

When I asked the ministry people, "How does it default?" I got a very different answer from what I'm hearing you say. When you say the default automatically goes to the male, you've got a whole bunch of heads behind you, which you haven't been seeing, shaking no

very vigorously.

Obviously I have two answers coming on the same question, which to me is the whole crux of the problem. It's a disagreement between the two, one having maybe more power than the other, and how do you solve this? I can see, even if there are separate cheques, where the weaker spouse, if I can use it that way, ends up paying the rent, and by then there's nothing left of that cheque anyway, so I don't see that they're any better off. I'm back to the problem with the disagreement on whom the cheque gets written to and gets defaulted to. There's certainly a disagreement between your office and the ministry's office, and that's what I'm struggling with.

Ms Jamieson: There are two points you've raised there, Mr Galt. The first one has to do with the issue of, if the two cheques go, what's the coercion factor or possibility in their requesting two cheques? I think there may well have been one, and that's why I didn't recommend that. I recommended that it automatically be issued in two cheques, that there not be a requirement for the man to agree, as the case is now. I would say that if the two cheques are issued, 50% to each person, keeping in mind the total for the family unit as it's currently figured out — I wouldn't touch that; just split it in two at the end of the day.

On the question of what the ministry views as their reality and what I found is their reality, there's been a good deal of mention made about choice, and that's the answer I heard from the ministry when you asked about the default question. There's a presentation of, "Here are the choices." The default question for me is, at the end of the day, what does the ministry do if there is not agreement or if the man does not agree that it goes to the woman? At the end of the day, the cheque goes to the man. That's what I found. That was the purpose of the investigation and that's what we did. In fact, that was not disputed at any time by ministry officials. They've not responded very much at all to the improperly discriminatory principle.

Mr O'Toole: I guess there's assumed systemic discrimination here. That's kind of the way I see it.

I just want to pose a couple of questions to you. In your research, had you actually looked into the Canada pension benefit where the recipient, be it the surviving spouse or surviving children — who gets the cheques

Ms Jamieson: We certainly looked at old age benefits and found that's a useful precedent because the cheques

Mr O'Toole: That's really the point I'm making. I know that in your research you probably would have looked more broadly than just at the Ontario component of social programs. That is the case federally, not because we made it or anybody else made it, but that is the case. I know it to be the case.

Another thing I'd ask your opinion on would be, it does of course become politically stressful when you talk about the spousal entitlements and all those other entangled political differences people have. What is your view with respect to the current language, I understand, from the Family Benefits Act which does not allow the government to strip off a cheque for the rent or shelter allowance? What's your view? That is an outstanding issue, I can tell you, both as an MPP and as a previous councillor. It's an ongoing problem, as are hydro arrears. There's some inability for the landlord to turn the power off under certain legislation and also for the landlord to deal with the situation of back rent. What's your view with respect to, if we're simply going to change the system — we'll have box number three, "Hydro," box number four, "Landlord," on this form they're going to fill in. Do you think those cheques should also be peeled off and we'll get right down to the money for the cigarettes and the food, whatever they buy with their money?

Those people have entitlements. They are providing a service and they should expect to be paid for those services. Let's get the program working right from the beginning. I think you look at things very objectively and I'd like your opinion.

Ms Jamieson: I thank the member for the invitation to comment on that subject. I honestly haven't looked at that piece in this investigation. I haven't looked at the extent to which that should be the role or that would be unfair in the case of the ministry's involvement, whether that in and of itself might be taking on a role that intervenes in a person's freedom to do with their benefits as they see fit. That's that whole area of political -

Mr O'Toole: It's not political really, though.

Ms Jamieson: It can be, but that hasn't been the focus of my investigation on this case.

Mr O'Toole: Do you think we should address it, though? If we're going to change this new system to be able to adequately split maybe the children, there may be the case where the spouses, the couple, the whatever, are having problems and one of the dependent children is disadvantaged and should maybe be getting a cheque for their own food or whatever. You know, we've got to look to the 21st century here. Do you think we should make provisions for splitting it beyond just the spousal issue here that we're dealing with, hydro, landlord, dependent children, as Canada pension has done with -

Ms Jamieson: As I said, I think you're talking about a much bigger picture of social reform. While I have personal views on that, I haven't investigated it. I haven't looked at a complaint about that. It wouldn't be appropri-

ate or fair for me to —

Mr O'Toole: Use your office in that way.

Ms Jamieson: Yes. Mr O'Toole: Thank you.

**Ms Jamieson:** I think you can understand that.

The Chair: That completes my list. Are there any other questions?

**Mr Lalonde:** I would have a question to Ms Jamieson. This case of Ms C, do you know if we have any other similar cases where the people have been critical of not getting their share of the family benefits cheque, or is it just this one isolated case?

Ms Jamieson: I can't give you exact figures, but I can tell you that one case of systemic discrimination is enough in my books if there were even only one.

Mr Lalonde: Do you know if this Ms C has any dependants or children?

Ms Jamieson: I don't, offhand, know that. I don't believe so.

Mr Lalonde: I would come up with a statement before I close off. I wonder if the ministry has ever looked at the possibility, whenever there is a dependant or children within the family, that an arrangement could be made with the federal for those who have family allowance cheques, that the sole amount is transferred to the federal and one cheque issued for the family allowance for the dependant that would go with the family allowance. That would prevent a lot of headaches and also make sure that at least the mother is getting the cheque for the children. The share or the part that is allowed for each child, the mother would get at least that part.

At the present time, when it comes down to adults, to spouses, like I said a little while ago, I think there's a justice system in place that could handle that part, because for one specific case, looking at the cost that the taxpayer would have to pay, I think it's quite huge.

Ms Jamieson: Just to add to that, if you look at the initial presentation last day, we talked about the numbers of people who were in this situation, the thousands of

people, the couples.

When I responded on how many people are in Ms C's particular case, I don't know how many are in her particular circumstance, having been left with the bills and so on, but I do know that there are many, many people, indeed by definition all the people who are receiving the cheques under FBA as couples when they were individually entitled, who are in the same situation.

Mr Lalonde: I really feel at the present time, referring to Mr O'Toole a little while ago, that if there was a form with the squares that you could just tick off, probably the government should look at this possibility: who would be paying the rent, who would be paying the hydro and everything. Even with the hydro at the present time, the landlord becomes responsible and you can't just cut off the power. I don't think the landlord's entitled to cut off the power and he could be sued for doing it. Hydro is doing it at the present time without notifying the landlord.

Mr Len Wood: I have a couple of brief statements and then probably a question I'm not sure you're going to able to answer.

I agree with you that if there's one case of discrimination out there, if we can do something to eliminate it, we should do something, the same as if there's one theft or one murder or one assault, we shouldn't just say: "Well, that's not a problem. We shouldn't deal with it." I agree that even if there's only one that has come forward, we should find a way of making sure the discrimination does not continue.

The more questions we have from Tom and from Barb, the more questions I have in my mind. If the initial application is put in — 24 hours can be a very long time in a family unit or a relationship or whatever and things can change very rapidly, depending on what's happening. Do you know if, after the first cheque is received, that could be changed by a phone call or by a simple matter of changing that to split it into two cheques? That's a concern I have. Rather than allowing the discrimination to continue and continue and continue for a period of time, if that can happen, I would say it's a step in the right direction.

But if that can't happen, if it's a situation that is allowed to exist for six months, we're going to be spending more money on battered homes and on trying to find other ways of eliminating this discrimination. I know for a fact myself — and I just go one step farther — we have people who, during the last census report, when the people went to the door asking, "How many people are living in this house?" the answer was, "Three, four people." In fact, we know, I know, there are as many as 19, 20, 21 people living in that home, none of them working, but they're all part of a family unit: the grand-

parents, the parents, the married children and the great-grandchildren, all living in one of these houses because there is a shortage of housing in some of the communities. In those units — if they were to come out and say there are 18 or 20 or 21 people living in one and there is only one cheque being cut for the whole unit, part of that is federal responsibility, but still. That's the question I have. Can it be changed in a 24-hour period without an agreement from either spouse?

Ms Jamieson: It's my understanding that the couple can go in and change. Say, if the cheque initially comes to the man, can they go in and change and have it go to the woman? Yes, they can.

Mr Len Wood: Can they split it?

Ms Jamieson: Under the current system, no, and if you say there's always that chance you can come back and change it, you've still got the same problem as far as I can see, because unless the man agrees that it goes to the woman, it goes to the man. In a relationship where there is abuse, we all know it's about power dynamics. Money figures into that, a very key part. So what you're doing is forcing women to be in that situation or leave the relationship, and if they leave the relationship to get the benefits to which they're entitled, it's going to cost a whole lot more, because to calculate two separate benefits is higher than a benefit as a family unit together.

Mr Len Wood: If there's no way of eliminating this discrimination that is existing, whether it be one case or whether it be 100 cases out there, if there's no way of eliminating with the existing rules and regulations that are there, I think we have to try to find a way of making sure that discrimination does not continue, the same way as — I'll repeat — if there's one murder case out there, if there's one serious theft out there, one serious assault out there, we're not going to say, "Well, it's only one and we're going to forget about it." We would take some kind of action. Discrimination is the same thing as far as I'm concerned.

Ms Jamieson: Just to that, as a final word, Mr Wood, every person who applies for family benefits is in this situation. Every woman, every person who applies for family benefits is in this situation, and that's why it cries out for remedy.

Mr Len Wood: I apologize that I wasn't able to make it for the beginning of this particular case on another day, but I'm realizing now that it is serious, that we should listen to what is happening here.

Mr Froese: Apology accepted. Mr Len Wood: Thank you, Tom.

1110

Mrs Fisher: Just to clarify a couple of points and not to pose questions, because I'm not so sure there are any left, certainly that I have anyway, but a couple of points of clarification.

In a situation where the bills of the household aren't being paid, there is a mechanism, regardless of who the recipient is of that cheque, to make that be righted. Let's assume for a second that the male is the recipient of the cheque and in fact rent isn't being paid, hydro is being cut off because of non-payment, the phone is disconnected etc. The woman in this situation has every right and, I think, a responsibility in a family way to notify the

social assistance department, GWA, that that is happening.

Now these cases are ongoingly monitored anyway. Any recipient caseload is ongoingly monitored and it should be obvious to the case worker, I think through the communication with the recipients — and just because one's a signing matter and the other's a spouse, I consider it a partnership unless they're not living together. In the case of those recipients, each of those partners has a responsibility to that revenue, to spend it properly. The other partner, where there's abuse of spending, has the right to notify GWA so that will be righted. You can go as far as automatic deduction for rent, direct payment which is an automatic deduction from that social assistance cheque that goes to that house. The same with hydro, and I guess whatever other arrangements are made between the case worker and the recipients can be made in the event that the funds are being abused.

I think there's a protection mechanism in place right now to ensure that where they are being abused, whether it's the male or the female abusing that system or the cheque, there is a mechanism in place. All it is is the difference of a phone call or a contact with the case worker. In the case that Mr Wood raised, I totally agree with you that 24 hours is a very long time in a relationship that's not going smoothly. The potential for in and out and in of a relationship within that 24-hour period exists, of course. It's not normal, but it could happen.

The situation is that if we go to this other — you were taking a direction which I can understand. With regard to one situation of abuse or one situation of any type of crime, a killing or theft or anything, it's not acceptable. But I don't think we want to abdicate the situation of a woman or a man staying in a relationship, in an abusive situation, because of this cheque. Whichever of the two parties chooses to leave that relationship has every right immediately to reapply for benefits to cover themselves and, quite frankly, the rate is higher on the single dependency issue.

I think if the situation is that bad in that relationship, again coming back to the point that, as government, we have no right to be determining a faulty relationship or a non-faulty relationship, that decision of choice has to be made between the two applicants and then the person has a right to get out of a situation they're not happy with, and it may be just the financial side of it. If in fact one of the parties is not spending wisely, the other party has a right to leave and then develops that right to an application for social assistance as a single individual, maybe with children and maybe without.

I think we're not trapping, if you will. I think this system prevents the trapping of somebody being abused in that situation by making a wrong choice maybe at the point of initiation of that application. I will come back to the point that there is choice at the initial stage. That choice has to be determined by those applicants. It's up to them as mature adults who have a need to decide how they're going to agree to filling that need.

In fairness to Ms C's case, I think she made a choice of in, out, in, exactly what Mr Wood demonstrated as to why somebody needed to be treated individually and the system will take care of that. She can be in and it's a

joint cheque. If she leaves the relationship, she goes out and she's entitled to application on a single benefit. She comes back in and she's back in a relationship. But with the structure of a family unit, it's impossible, I think, to expect government to be deciding whether they want to do one or two with their relationship.

The Chair: I see Mr Wood's hand.

Mr Len Wood: I won't be lengthy, but -

The Chair: I'll just make a comment at this point. We're here to ask the Ombudsman questions arising from her response to the report of the ministry. There will be time for debate on the question before us after we get through this. I urge everyone to confine their remarks to questions of the Ombudsman, to flesh out their understanding of her position on the matter, and then we'll get into debate as soon as that's complete.

Mr Len Wood: Yes, and I'll direct my comments and questions to Mrs Jamieson and a follow-up from some of the comments that were made by the previous speaker.

If the only irritant is that the two people have to agree and if one doesn't agree the cheque would automatically go to the male partner in that household, if that is what is going to cause a huge argument or a huge disagreement as to what happens in that household where the male would have complete control over the money, and if by issuing separate cheques it would eliminate the discrimination and people could continue to have a half-decent relationship in that household, that's the point I was trying to make. If this is all we have to do to eliminate discrimination and make sure that particular family unit, however it's made up, can stay together and can have their independence, why are we not going to do that?

Ms Jamieson: I think that's an excellent question. In fact, for the ministry to issue two cheques is to get out of the business of being involved in the relationship, and I think that is where the ministry should be, because at the moment, with a policy and a practice that is systemically discriminatory, however unintentional, it puts them in a position of disadvantaging the women in the relationship, and I don't think that's the position where, particularly because it violates the Human Rights Code, any ministry wants to be.

I don't take any comfort, and I doubt that any of the women in this situation would take comfort, from the suggestion that if you don't want to be in a situation where you're on the receiving end of a policy that's systemically discriminatory, you can leave and that that surely is fair and free choice. I don't think that's a reasonable response to people in this situation. It certainly doesn't address the continuing issue of the ministry having this practice every day.

The Chair: Are there any further questions?

Madam Ombudsman, thank you for appearing before us and assisting us with this process, and thank you to the members of the ministry for your assistance this morning.

Ms Jamieson: Just for clarification, will you be dealing at some stage later this morning with the other hearings, what you're going to do about that?

The Chair: You can see where we are on the clock and how long it has taken us to get here. You can draw your own conclusions as to how much progress we're likely to make on other matters this morning.

Ms Jamieson: Okay. Thank you.

The Chair: In a manner consistent with the established practice of this committee, I propose that we now enter into closed session.

The committee continued in closed session from 1119 to 1147.

The Chair: Welcome back, everybody. After considering the matter in closed session, consistent with the established practice of this committee, I have been instructed to report in open session as follows: After considering the submission received, the committee decided that it could not support the recommendation of the Ombudsman.

Thank you all very much. Thank you for your assistance with this process.

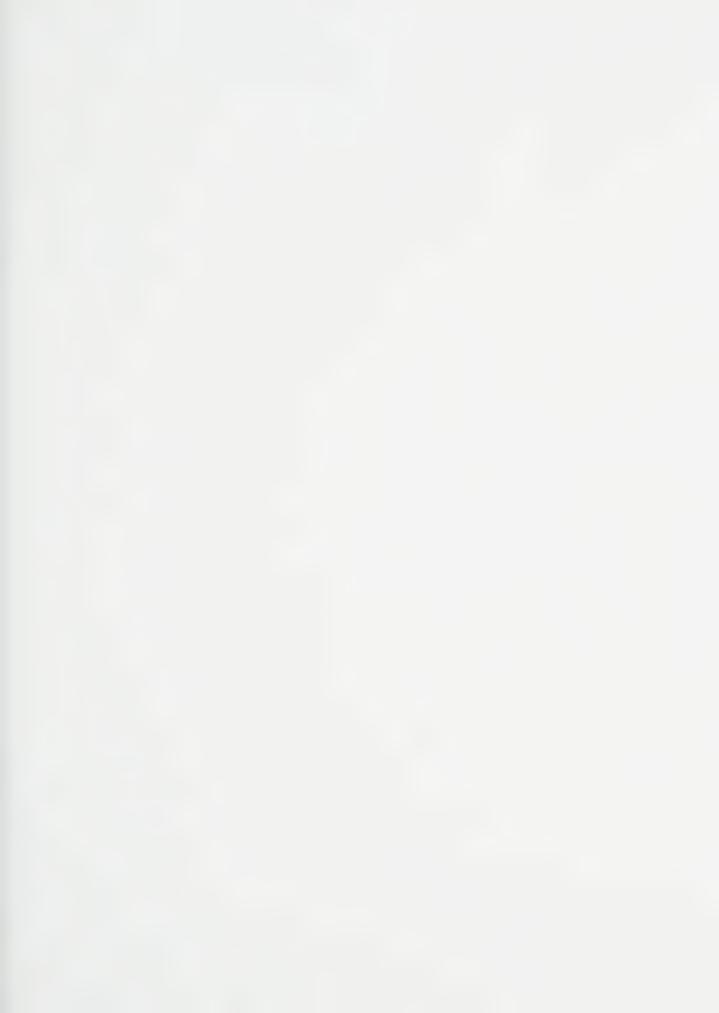
Moving now to other matters, the one matter remaining for us to dispense with today is the composition of the subcommittee. Mr Galt is no longer a permanent member of this committee and therefore is not a member of the subcommittee. Mr Froese, you have a motion arising from that?

**Mr Froese:** I move that Mr Stewart be appointed as a government party representative on the subcommittee on committee business.

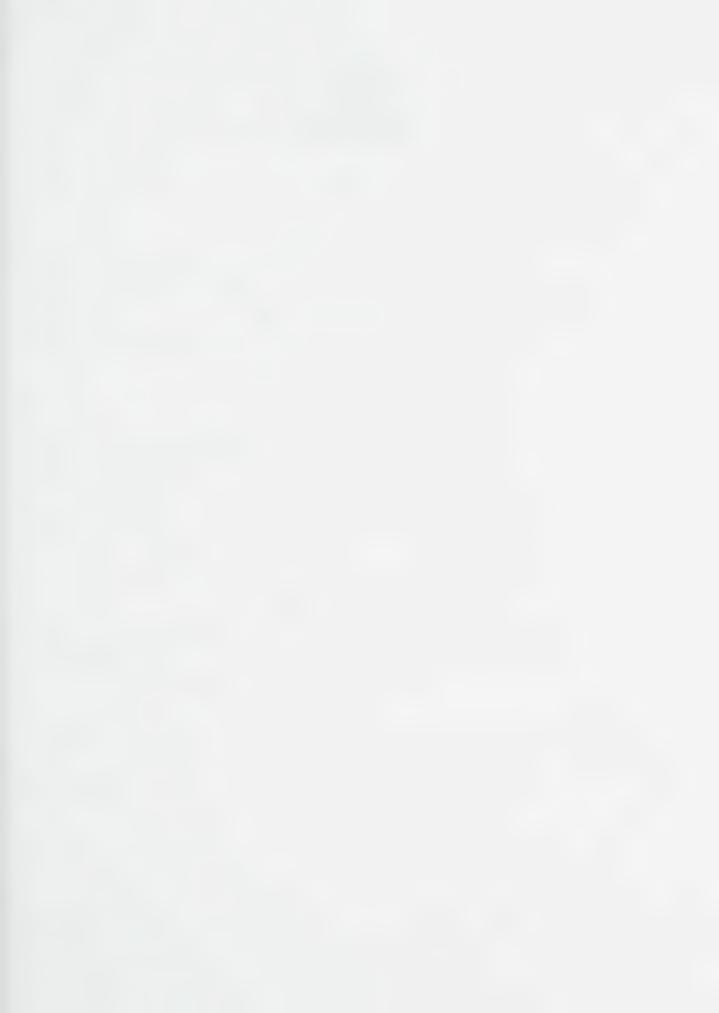
The Chair: Those in favour? Any opposed? That's passed unanimously.

Thank you all very much. Today's proceedings are adjourned.

The committee adjourned at 1148.







## **CONTENTS**

## Wednesday 22 January 1997

Case of Ms C			
Chair / Président:	Mr John L. Parker (York East / -Est PC) Mr Tom Froese (St Catharines-Brock PC)		
Mr Carl *Mrs Barbara *Mr Tom *Mr Pat *Mr Leo *Mr Jean-Marc Mr Rosario Mr Bill *Mr John R. *Mr John L. Mr R. Gary *Mr Bill	Caplan (Oriole L) DeFaria (Mississauga East / -Est PC) Fisher (Bruce PC) Froese (St Catharines-Brock PC) Hoy (Essex-Kent L) Jordan (Lanark-Renfrew PC) Lalonde (Prescott and Russell / Prescott et Russell L) Marchese (Fort York ND) Murdoch (Grey-Owen Sound PC) O'Toole (Durham East / -Est PC) Parker (York East / -Est PC) Stewart (Peterborough PC) Vankoughnet (Frontenac-Addington PC) Wood (Cochrane North / -Nord ND)		
*In attendance /	présents		
Mr Doug	Autres participants et participantes: Galt (Northumberland PC) for Mr Murdoch Rollins (Quinte PC) for Mr Stewart		
Clerk / Greffière:	Ms Lisa Freedman		

Staff / Personnel: Mr Andrew McNaught, research officer, Legislative Research Service

District Con-



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# Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 29 January 1997

Standing committee on the Ombudsman

Review of the Office of the Ombudsman

Case of Ms C

Chair: John L. Parker Clerk: Lisa Freedman

# Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 29 janvier 1997

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman

L'affaire Mme C

Président : John L. Parker Greffière : Lisa Freedman

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 29 January 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 29 janvier 1997

The committee met at 1002 in room 151.

## REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John L. Parker): I'd like to welcome everyone to this morning's meeting of the Ombudsman committee. This morning's agenda begins with public hearings on the working paper containing proposed revisions to recommendations made in the 1993 Report on the Office of the Ombudsman. I'd like to welcome Mr Patten to the committee. We're pleased to have you on board with us and we're sure we will benefit from your participation on the committee. Mr Smith is visiting us today as a substitute.

Mr E.J. Douglas Rollins (Quinte): I'm a substitute

The Chair: Doug, are you a substitute? We welcome Mr Rollins to the committee this morning. You're such a regular I'd forgotten you weren't actually a permanent member.

## UNION OF INJURED WORKERS OF ONTARIO

The Chair: Our first submission today is from the Union of Injured Workers: Phil Biggin, executive director, and Maurice Stewart. Welcome, gentlemen. We have a half-hour for your presentation. You may use that time as you wish. Any time left over after your formal presentation is typically left available for questions from the committee. If we have time for questions today we will begin with the opposition party.

Mr Phil Biggin: The Union of Injured Workers of Ontario welcomes the opportunity to speak to the standing committee on the Ombudsman in the discussions on

the working paper and the 1993 report.

First of all, I would like to introduce ourselves. The Union of Injured Workers is a non-profit organization specializing in representing the interests of injured workers and other members of the community before the Workers' Compensation Board, the Workers' Compensation Appeals Tribunal, Canada pension, the Human Rights Commission, the Criminal Injuries Compensation Board and other government agencies that our client group comes to us with problems with.

The UIW was founded in 1974 with the dual functions of advocacy and law reform. In 1975 the organization instituted direct representation of injured workers. That was done with the assistance of law students from the University of Toronto, and since, we have acquired funds and we have five full-time staff. For 23 years the UIW has been at the forefront of initiatives to reform the workers' compensation system. We consider the Office of

the Ombudsman to be critical in protecting equity in the system.

Over the number of years we have been working in this area, the Ombudsman's office has been very important in highlighting problems that exist in the system. For this reason, because of their status, many of these problems were problems that either individual injured workers were complaining to us about or to their MPPs. But once it goes to the Ombudsman's office and the report is released, the issue becomes more public and it's possible to have the kind of debate that is necessary to bring about reform and make the system work better.

For injured workers, the final level of appeal in the workers' compensation process is the Workers' Compensation Appeals Tribunal. If an injured worker is not satisfied with a decision from the tribunal, they can contact the Office of the Ombudsman and ask that the matter be reviewed. The Ombudsman has broad powers to investigate decisions, procedures and practices of the appeals tribunal. The complainant can reasonably expect that if their complaint is justified, the Ombudsman has the power to recommend that the tribunal change its decision. Of course, we would appreciate it if the Ombudsman's power was in fact a little bit stronger. We understand, however, that this would not reflect the fact that the tribunal is the final level of appeal.

For complainants whose complaints are not justified, the Office of the Ombudsman provides a second opinion by providing a written decision and the reasons, and really can bring something to closure finally, with the worker having the understanding that, yes, even though they disagree with the decision, that decision was carried out in a fair and just way.

I'm going to turn over the balance of the presentation to one of my staff, Mr Maurice Stewart, and then we'll entertain some questions after we complete the submission.

Mr Maurice Stewart: Our opinion regarding awareness and accessibility of the Office of the Ombudsman: We agree there is a need for greater public awareness and accessibility of the Ombudsman's services. For example, many injured workers who represent themselves at the Workers' Compensation Appeals Tribunal level may not be aware of the services the Ombudsman can provide. The same is true of many people who, for example, have been denied welfare or who are unhappy with the way they are treated at the welfare office.

We agree that the Ombudsman should present, as part of the annual ombudsplan, proposed public education initiatives for each fiscal year, with the aim of increasing public awareness and accessibility to the Office of the Ombudsman.

Regarding the term "Ombudsman," we feel that a more gender-neutral term should be selected to describe the office. This is not Sweden where the term originated. If our equity laws mean anything and we object to any form of gender bias, the same rationale that was used to change the term "Workmen's Compensation Board" to "Workers' Compensation Board" should be adopted. We see nothing wrong in changing the term to "Ombudsperson."

1010

Revised recommendations, public comment by Ombudsman on investigation, revision 7: We feel it is unfortunate that at present the Ombudsman cannot release information to the public upon the completion of an investigation other than through tabling of a special or annual report with the Legislature. We feel that when it is in the public's interest, the Ombudsman should be able to comment publicly after an investigation in order to bring to light a government agency's refusal to implement recommendations. In our case, this agency is the Workers' Compensation Appeals Tribunal.

We therefore support revision 7 which amends the act to make public comments possible. We disagree, however, that this should be done by means of a special report to the assembly. We feel this should be done publicly, which increases the public's awareness of the importance of the Office of the Ombudsman in the rule-

making process.

Appointment of Ombudsman, revision 20: We submit that section 3 of the Ombudsman Act be amended to provide that the Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the assembly only after a recommendation by a majority of the members of the standing committee on the Ombudsman, and that such majority shall include at least one member from each official party in the assembly.

Operation and management of the office, revision 26: We also agree with the change in revision 26 which gives the Ombudsman more importance by making it clear that it is the Ombudsman who brings forward the annual ombudsplan for discussion with the committee, rather than the committee discussing with the Ombudsman the

annual ombudsplan.

Rules for guidance of the Ombudsman, revision 27: We actively support the move to increase the Ombudsman's participation in the rule-making process. As worded in the 1993 report, we also feel that the term "permit" is, quite frankly, condescending and should be replaced with the word "invite," as suggested in revision 27.

Recommendation-denied cases, revision 31: We support the view that in revision 31 the added words "that is, cases in which a tentative or final report is presented to a governmental organization," clarify the meaning of "formal recommendation" in amending the act to provide that the Ombudsman shall include in each annual report a description of each case presented.

Complaints about Ombudsman investigations, revision 34: We agree with the recommendation that the act be amended to provide for the disclosure of information which covers the Ombudsman's handling of an investigation, and as revision 34 suggests, this is solely for the

purpose of assisting the committee in the formulation of rules for the guidance of the Ombudsman and to enable us to properly evaluate criticisms made by individuals about the service they have been provided. We feel that in this way the Ombudsman has some accountability to the public at large.

Change the composition of the committee, recommendation 42: We agree with the revision to delete recommendation 42 and leave the composition of the committee in its present form. The recommendation had good intentions. In practice, however, things are different and so the revision avoids putting the chair in an awkward

position.

Debate of committee reports, revision 43: We find that the 1993 report was much too vague in terms of the actual time the reports of the standing committee on the Ombudsman shall be deemed to be adopted. It simply suggested "within a specified time." We agree with revision 43 which specifies this time as "the end of the session following the session during which the report is tabled, unless before that date a vote has been held on the motion to adopt the report."

Proposed terms of reference for the Ombudsman committee, revision 44: We agree that the standing orders be amended to provide that the standing committee on the Ombudsman shall have all responsibilities laid out in revision 44, with the most important function being "to provide a legislative link and sounding board for the Ombudsman, with a view to advancing the Ombudsman's fulfilment of his or her functions." We agree with revision 44, which moves this important function to the beginning of the list of the committee's responsibilities rather than at the end as was the case with the 1993 report.

Subject to any questions the panel may have, this concludes our submission.

Mr Pat Hoy (Essex-Kent): Good morning. Thank you very much for your presentation and the time you've taken to look over many of the recommendations that are before us.

I want to ask a little bit about the Workers' Compensation Appeals Tribunal. You state, "The Ombudsman has broad powers to investigate decisions, procedures and practices of the appeals tribunal." Is it more in practice that the Ombudsman would not so much focus in on the decision but rather that the practices and the procedures were correct, rather than going directly to the question of whether the decision was a good one or a bad one? Would you have any knowledge of whether she looks at procedures and practices only?

Mr Biggin: I think she's bound to determine whether there's been an error in law, and in order to do that, it is necessary to go over the procedures and the actual details of a case. What they do is really, in a sense, de novo review the whole history of that case and how it's been adjudicated, not only with the last level of appeal in the workers' compensation system but through the WCB as

well.

Mr Hoy: You talk about awareness and accessibility. The Ombudsman probably would agree with you on those two issues. The current Ombudsman has stated that they try to accommodate people with the many languages that

are spoken as a first language here in Ontario, trying to fulfil roles for people who don't have English as a first language. I think that certainly the committee wouldn't want to harness the Ombudsman from letting people know what their rights would be and how to contact that person and all those manner of things.

The "Ombudsperson" is something that I don't think the committee ever spoke of, and it's an interesting

comment on your part.

Public comment, and this would be my last point or question: The Ombudsman historically has always worked hard to protect the confidentiality of all cases. The suggestion is that there be a special report made to the Legislative Assembly, which would be public. Once it is in the House here, that decision and the rationales would be made public. But you would like to see that even broader than that?

Mr Biggin: I think what we're talking about there is, and I want to speak to the question of accessibility as well, in no case would we advocate overruling the rights of the individual for anonymity or public disclosure. What we're talking about is that you can do a case description, the very facts of the case, without actually indicating who the individual is who is involved. This goes hand in hand with the question of accessibility.

One of the things we have found in our work over the years, and particularly more recently in the communities, is that there is a great deal of ignorance, and I don't mean that disrespectfully to people, but people just don't know what their rights are. I think this starts with the schools, because it's not being talked about there.

1020

We've done a project through our organization with health and safety in the communities, and we did it in the high schools and at the community college level. Even at the community college level, it's amazing how people don't realize what opportunities they have to appeal. In fact, if time limits are placed, are imposed, as certainly is going to be the case with Bill 99 if that is to pass in the Legislature, people would lose that right. So I think it's very important that the function of the Ombudsman be

understood by people.

We've focused only on workers' compensation. The Ombudsman is of course much broader for all governmental agencies and how they deal with the public, but what we would like to see is a more public document that would make the Ombudsman a real, live entity in the community, not a document that says, "Mr Biggin, in a case before the Workers' Compensation Appeals Tribunal, asked for entitlement for such-and-such a disability, was denied, and some of the procedures were not properly followed." We don't want that kind of public disclosure. What we want is something that assists the Ombudsman to go beyond - making the presentation to the Legislature and to agencies like ourselves or social service agencies is still a very restricted group of people. We'd like it to move out and become a more public thing.

On the other hand, we don't want to see the Ombudsman's office inundated with frivolous cases. There has to be some kind of balance. So that's what we're talking about with that particular proposal.

Mr Len Wood (Cochrane North): Thank you very much for coming forward with your excellent presentation to this committee. I'm sure a lot of your ideas and suggestions are going to be helpful in seeing how this committee works and the future duties of the Ombudsman or Ombudsperson, however the name may be.

I just wanted to go a little bit further. You've elaborated a little bit on finding ways and means of increasing public awareness and accessibility, and even more so in the area that I represent in northeastern Ontario where we have a lot of remote communities that are accessible only by airplane and by train or by water. There are no roads going into those communities, so a lot of people look to some way of resolving their grievances or this and that, and my office does a certain amount. I'm sure you have more ideas and suggestions on how we can increase public awareness and accessibility to this office without opening up the floodgates to a lot of frivolous complaints that could be handled in other ways. I'd just give you an opportunity to elaborate further on that.

Mr Biggin: Yes, and this can be done without increasing the costs of operation. I think in a long-term function we have to look at our education system, and in the curriculum of the education system there should be a component that deals with all the agencies of the government that people, once they graduate from school and start to work, or even before they graduate, would come into contact with. In the long term, there should be education utilizing the education system across Ontario. In the short term, it can be done through the volunteer sector, through community organizations, community

groups, churches and other areas.

In every proposal, I know that cost considerations are at the forefront, but a lot of things can be done at a very

low cost and can be done very effectively.

Mr Len Wood: Do you feel we should be using actual cases that have been resolved as an education, without using names? I'm not talking about using the names of people, but actually getting pamphlets out into the schools, to grades 7, 8 and 9. We're going to see a lot of them actually going into the workforce, because I understand with the changes to education it's going to be compulsory that they have a couple of years of part-time work in McDonald's or A&W or whatever in order to get their certificate to graduate from high school, and as those things happen, these people have a chance of getting hurt in the workplace. So should the education start at that level and continue?

Mr Biggin: Yes, I would think it should start, at the very latest, in grade 9. In terms of case studies, I'm not sure that would make very much of an impact upon my young fellows who are in school right now. You would have to broaden it and put a number of areas together so that the Ombudsman wouldn't be there just as a specific thing. It would be health and safety, health in the communities, workers' compensation, Ombudsman, employment equity rights, whatever, the whole gamut of that. In that case, I think generic examples would be very useful.

Mr Len Wood: With the amount of major changes that have happened — mega-week started on January 13. They call it the spring sitting of the Legislature, but it's actually not spring here in Toronto, not this morning.

With a lot of the changes that are taking place in the administration of welfare, social services, all of these services that people have looked to the provincial government to deliver, do you think the Ombudsman or Ombudsperson is going to be more swamped with complaints as things start falling through the cracks as the transfer takes place over the next nine or 10 months?

Mr Biggin: That's hard to say. I can just go back and give you an example. When we were talking about Bill 162 and workers' compensation, I can remember Greg Sorbara, who was then Minister of Labour, saying, "This is not going to result in a higher level of appeals," and we were just swamped about three years after that. Then we had Bill 165, which came in under the NDP government, and now there are appeals coming forth there and it's all backlogged. I think there would have to be a screening mechanism put into place whereby some determination is made very early on about the seriousness of the request.

We've been blessed in our office to have received faxes from both sides. We're getting the people who are against the megacity and we're also receiving faxes through our office that are making the argument for these changes. So it's very complicated, and certainly the public hearings on this are going to be very important.

I don't want to try and play fortune-teller and say that a lot of things would be increased, because I don't want the committee to come away with the impression, "Maybe we should restrict the Ombudsman's or Ombudsperson's office even more." That's not what we want to see. We want it to be fiscally responsible, but we want it to be able to function there as the last court of appeal, so to speak.

Mr Len Wood: Just briefly, I wasn't necessarily thinking of the megacity legislation so much as taking the property taxes for schools off and adding on another \$1 billion or \$2 billion in services.

Mr Biggin: Downloading, yes; I understand.

Mr Len Wood: Thank you very much for your

presentation. I was pleased to listen to you.

Mr R. Gary Stewart (Peterborough): My apologies for not being here at the start of your presentation, but before I ask you the question, sir, are the members of your union injured workers who are working or injured workers who aren't working or both, to be members of your union? Just for my own mind. I don't know, so I'd like —

Mr Biggin: Our bylaws were just amended in November. Traditionally, to be a member of the Union of Injured Workers, you had to be injured on the job. You could be injured and return to work and then get reinjured and be a member of our organization, or, many of our members are permanently disabled and no longer able to return to the workforce.

In November last year we broadened that to include all members of the community because we have been getting people coming in mainly through our injured worker members who have problems in some area and have no mechanism of representation. We don't charge a fee for service. There's no charge for the service we provide, so it is a little broader now.

1030

Mr R. Gary Stewart: Okay. I didn't know, so now I know. Thank you very much.

Mr Biggin: We'd like to get everybody back to work. That's certainly our goal, but it's not really a possibility. There are always going to be those workers who, through no fault of their own, are so disabled that they can't go back to work.

Mr R. Gary Stewart: I appreciate it. The question I have is in regard to revision 34, and I was very interested in the last comment Mr Stewart made. The final line says, "We feel that, in this way, the Ombudsman has some accountability to the public at large." Do you believe that the Ombudsman should have accountability, whether it be to the public at large, in some small way to government, this committee etc?

Mr Maurice Stewart: All government agencies should

have accountability to someone.

Mr R. Gary Stewart: One of the comments that might be made in this particular situation is that if there is information given to committees or whatever, possibly the cooperation between the Ombudsman and those particular people and that particular case may diminish. I'm trying to get to the point that the Ombudsman certainly is supposed to be an identity within themselves.

Mr Maurice Stewart: Yes.

Mr R. Gary Stewart: But when you're spending a lot of taxpayers' dollars, what I'm trying to get from you gentlemen is, do you feel that there has to be some type of accountability?

Mr Maurice Stewart: You just answered the question right there; you said, "When you're spending taxpayers' dollars." Why shouldn't they be accountable to the public?

Mr R. Gary Stewart: I can say that. I'd like to get other people to say the same thing if they're so inclined.

Mr Biggin: We're saying there must be accountability but that the accountability should not stop just with the committee or the government; it should be to the general public at large. As Maurice said, it's their money that's being spent.

Mr R. Gary Stewart: Great, that was my question. Thank you.

The Chair: Further questions from the government side? Seeing none, that just about consumes our half-hour. Mr Biggin, Mr Stewart, thank you very much for assisting in our process.

## **GEORGE AREGERS**

**The Chair:** Our next deputant is Mr George Aregers. Welcome to the standing committee on the Ombudsman. Please start.

Mr George Aregers: My name is George Aregers. I've been living in this city all my life and I had conflicts with some of the politicians we've got in the southern part of Ontario. I would have a problem, I would go to them and they would totally ignore me, they would send me to the Ombudsman. That's where your problem is. The politicians aren't listening to the public. I'm not talking about now; I'm talking about 10 years ago, five years ago.

When I went to the Ombudsman I had a legitimate complaint. When I called to be on this committee, I was told this is not to bring baggage or something that I had a problem with, but I won't mention any names. My beef is that I've got five kids, and I bought a property and was continually pushed out of my property. I went to my politicians, asking them: "Hey, what's going on here? Once the government takes my land, it seems they can do what they want." Then the government set up certain little corporations that they can take the land and they're not accountable even to the Ombudsman, but it's a government agency.

If you can just bear with me, I made some quick notes this morning, and I apologize that I'm not a professional in coming up in front of people. I'll try to go through these notes as quickly as I can. They were done this morning. Before I go I'd like to thank this committee for providing the notes, the pamphlets, whatever the hearings were. I just came from a meeting the other night regarding my problem and I was told that if I wanted to make a deputation — this was in municipal — for about 50 pages I had to pay \$107, just for the notes. What I'm thanking you people for is that I didn't have to pay for the notes, and I think that is a step forward. This committee is open. There are the notes, and I took time to read them. But one thing I found about them is that it's too legal-worded in there, that it's not simple, basic. I hope that possibly my notes could be of some help to this committee.

What we need an Ombudsman for, I feel, is where legislation is not applied equally to everyone. It should be applied equally. Why do we need an Ombudsman? Like I said before, politicians ignore their constituents and rely on the Ombudsman. The Ombudsman should have the power to expose incompetent politicians in the Legislature. I say "incompetent" when a constituent has to call, send letters, dozens, and all this politician does is just send it to a department head. We don't need politicians like this. I'm not saying it's anyone who is here. I'm talking about where I live. It's not just one party. It's apparent that many people are confronting the Ombudsman's office because of these politicians.

Should this Ombudsman have accountability to this committee? It should have accountability to everyone. That's what it gets paid for. If we had a proper system where the people can go and complain — I assume you are all politicians. We wouldn't need the Ombudsman if it were like in the 1960s when the politicians on a weekly basis had their offices open, "Come on in," and you talk to them. You don't have that any more. What we've got is politicians hiring all these staff, and their role is to get rid of these people.

I would like to see in this Ombudsman thing simple language where an individual such as I or others can look down this list and say, "My problem is — yes, the Ombudsman can help me." There's nothing in there that I could see.

When you confront the Ombudsman you are assigned an inspector or whatever. I'm a public servant myself and I find, working a lot with my colleagues, the problem is that people don't know what I'm supposed to do for them — if people knew that when I get a complaint,

when they approach me this is what I do, that this is how to resolve your thing, and if I don't do these things you could go and complain about me.

When I went to the Ombudsman — two, three years, nothing. You call them up, "Oh, I'm working on it" — nothing. Is this what we pay all these public servants for? It's frustrating and this is why we're here today.

I noticed in the pamphlets that were given to me that we decided to have a committee to choose the Ombudsman. This is fine, but I know that in Mississauga and in Etobicoke we had these committees set up for salaries of the trustees or whoever it is. Lo and behold, we found out that it sounds great on paper and that the committee members were chosen by the mayors, whoever they were, to suit their purposes. No wonder we've got \$100,000 and \$150,000 salaries given to a lot of these people.

If we're going to have committee members, why doesn't everybody who's put a complaint to the Ombudsman in the past five or six years send a letter to these individuals and say, "Hey, we're going to choose the committee members," and the potential candidates for the Ombudsman are going to come in and ask for their vote? Let the people challenge them. Let these people say, "Hey, you didn't do anything for me last year" or the year before.

I find that where politicians choose individuals, even in my department — let's just give an example of principals in schools. Sure, we've got a problem there. They're teachers. What you need is that the principal should not be a teacher; he should be a businessman, proven capabilities of a businessman.

I apologize if I'm going to offend anyone here, but it just struck me that when we chose the Attorney General, I think it was, the first headlines after the individual was chosen — the individual's concerns were two things, "That's what I'm going to get done." That's wrong. They were children's and women's issues. We've gone through 10 to 15 years of using children to push certain agendas. This Ombudsman has to be for all people, and I'm getting tired when it's a white male. I've lived here and I've got five children and I treat all my children equally. I expect the Ombudsman, whoever is going to choose them, to treat everybody equally.

The powers of the Ombudsman: Does it have sufficient teeth or is it just a symbol? Is it something where a constituent who has a problem can go and just tell his frustrations and is forgotten about and just sent away?

What should happen is that it is confirmed in a certain length of time, say six months, three months. When a complaint comes to the Ombudsman there should be a limit that he has to act on it, when it's investigated it should go directly back to the local politician and the politician himself should take it to the Legislature. If it hasn't been resolved by the Legislature, I think the Ombudsman should issue some type of certificate to say that this person has been wronged and that there should be sufficient funds so this person can challenge it in court.

I don't know if I'm correct. Before it was just a fine. How could you fine a department \$1,000 or whatever it was? I'm going back five years, whatever it was, what-

ever penalties there were. Even the staff of the Ombudsman told me it's just a farce.

The question I want to ask is why in Canada, and let's say England or the States, is our system working but in other countries, Third World banana republics, it's not working. I think the reason it's working is we've got a supposedly good judicial system. Other countries don't have it, but I noticed that we're getting to be like the Third World banana republics, but we've still got the system. Where I'm going to connect it to the Ombudsman is that when I want information, I could go to the courts, they're open. I could go to the courts and ask for whoever is suing who. This is all open and available to the public.

Why is the Ombudsman so secretive when I go to them and say, "I want to know how many other people have complained on the same issue as me"? I called last week on this issue and the person who was an inspector for the Ombudsman said, "Oh, we keep everything confidential." I said: "Wait a minute. There's something wrong with that." If you want the system to work, let's make it open. I'm getting tired of this freedom of information, which is a lie. Just because there's a name attached to it, you're not allowed to see the documents. Why? What are we trying to cover up?

If an individual comes to the Ombudsman, there could be a form there: "Do you want this information divulged?" If the person says, "I don't want anybody to know," fine. But let's have the system open to the public. When you walk into the Ombudsman there are all kinds of files there on what the Ombudsman has done, what the complaint is. I would like to ask any of you people here today, what is it that could get someone into trouble if his name or his problem is divulged to the Ombudsman? What problems could it cause? I could go today for anyone here. If you had a divorce, I could go to 145 Queen Street and I could look up your whole file, even your medical problems, psychiatric problems. So I don't buy this thing that somebody's going to get hurt.

What has been happening for many years is departments in Ontario have been hiding the information to suit themselves so the public don't know how competent they are. Please, let's have it open. When I'm told that thousands of people have complained to the Ombudsman about how the conservation authority has been stealing people's lands and the Ombudsman never did anything, it hurts me. I want to know if these other people have been complaining about.

I think again that the Ombudsman should have a form such as this so that the people who have applied for help could ask questions. That's it. Thank you very much for listening to me.

The Chair: Thank you very much. We have about five minutes per caucus, beginning with Mr Wood.

Mr Len Wood: Thank you, George, for coming forward with your suggestions and ideas on how we can make better recommendations or revisions to the reporting of the Ombudsman. The 1993 report was used as a way of doing it, and it's unfortunate that this is taking as long as it has because we should actually be dealing with

the report of 1996, now that we're in 1997, the way it stands right now.

From your presentation I take it that you're following along the same lines as the previous presenters were: There should be more public awareness of what the Ombudsman is doing and how many cases they're resolving and the accessibility to the Ombudsman and have more of it out in the open. This is the impression that I'm getting to a certain degree.

Mr Aregers: It's no good to go to a lawyer, Len, and ask him, "I want to see how good you are in court or how many cases you were successful in." This is what the Ombudsman is hiding and a lot of other departments. If you call that accountability — it's no good to have thousands of people complaining about the same thing and the Ombudsman hasn't done anything. That should be available to the people. Why do we hide?

Mr Len Wood: This is the reason we're having the hearing right now, to try to get ideas and suggestions and ways and means of making people more aware of the Ombudsman's office and what type of reporting should be done: if there are 5,000 complaints that go in a year, whether the complaints are about my office or whether they're complaints about government members, whatever, and how many of these cases have been resolved. There's 5,000 complaints put in and 99% of them have been resolved just by the fact that people have gone to the Ombudsman. This is what we as a committee are looking at to see how we can get better reporting and these reports more out to the public so that people feel that they're getting their money's worth of these offices that are set up throughout Ontario representing the Ombudsman.

Mr Aregers: Let's not forget what I said a little while ago, and I hope you don't forget this. What I find out is that in the past 20 years the politician, I mean every time I go to him, he says, "Go to the Ombudsman." This is what the biggest problem is. For some reason politicians in my area are always busy. They can't see their constituents. Where are they?

Mr Len Wood: I can assure you that it's not happening in my area because I have, as I said earlier, a number of remote areas, and just the first week of January, which was the coldest week there was, I chartered a plane to go into to some of these communities to take their concerns. I never told a single person there that they should see the Ombudsman. I said, yes, I will resolve your issues and I will bring it back and I will put pressure on the government to try to act on some of the concerns that they had there.

This is my job as a politician, whether I do it by phone call when the Legislature's sitting or whether I do it on Fridays, Saturdays and Sundays out of my office or around the kitchen table. This is the job that I've been doing over the last seven years trying to fulfil that commitment to the people.

Mr Aregers: Yes, but you and I know I work as a public servant. There are some who are very lazy, and what I'm trying to say is, let's not use the Ombudsman as, you know, the one responsible and just throw it on to this position. All I'm saying is there should be something

in this document to say that the politician in the area is responsible.

Mr Len Wood: While they're here they should do their job.

Mr Aregers: Yes.

Mr Len Wood: Thank you.

Mr R. Gary Stewart: Thank you, sir, for your presentation. Am I hearing that you feel that maybe the Ombudsman's department, whatever you wish to call it, is the wrong process for the public to have complaints and investigation done? The concern I have — and most ministries now have commissions set up that are supposed to assist the public in their own way — is whether the process of the Ombudsman as it sits now should be changed.

Mr Aregers: Yes, it should, totally. My feeling -

Mr R. Gary Stewart: I know you had a lot of instances. I was going to read you a section in here where you were saying that you couldn't understand something. I've been reading it over for the last couple of months and I really can't understand it either. I'll just read it: "...at the end of the session following the session during which the report is tabled, unless before that date a vote has been held and the motion to adopt the report." Can you tell me what that means?

Mr Aregers: No.

Mr R. Gary Stewart: Thank you, sir. Just asking a question. Tell me, first of all, is the Ombudsman necessary as it sits now? Should it be appointed for nine years, as it has been? Should there be time limits for complaints? Should there be a different type of investigation? Should there be cost limitations and on and on and on? It doesn't appear, in your case, that it worked.

Mr Aregers: It didn't work, no.

Mr R. Gary Stewart: How do you see it being set up with more accountability to the people, more accountability totally, to get the job done and to allow investigations and complaints to be dealt with in a fair and equitable fashion and dealt with in a timely fashion, which probably is more important?

Mr Aregers: I agree with everything you said here, but it's not happening. I work with legislation myself —

Mr R. Gary Stewart: You're saying change in that

department is very -

Mr Aregers: There should be change, there should be some type of accountability. If you've got an inspector, that individual should have criteria so that the person he's interviewing who's complaining knows the steps he's going to take, what limits there are and what happens at the end. It shouldn't take two to three years and he still doesn't know.

Mr R. Gary Stewart: And a few hundred thousand.

Mr Aregers: That's right. I still think 20 or 30 years ago we didn't need the Ombudsman, because in the area where I am, Etobicoke-Lakeshore, my MPP's door was always open. You could go to his house. His name was Pat Lawlor — I don't know if you people remember him, or Ken Robinson. These are the type of people we had. But then all of a sudden we had them replaced by a person by the name of Ruth Grier. My God, you could never speak to her. I'm sorry I've given names here. But this is the kind of politician we've got in our area.

If these people would do their job, we wouldn't need an Ombudsman. We don't have to spend all this money. If you all had people work to make sure that every politician each week had an area, an office area or the public hall, where people could come to them and express their problems, you wouldn't have to waste all this money. Did I answer your question?

Mr R. Gary Stewart: Yes, sir.

Mr Tom Froese (St Catharines-Brock): I probably only have a little time. Thanks for your presentation. Maybe I'm wrong, but a lot of what you're saying stems from your own case. Without really getting into what your situation was, I'm trying to find out exactly what you want to see done or what your final recommendation is, what your bottom line is. In your earlier comments when you started out you said the politicians were not listening.

Mr Aregers: That's right.

Mr Froese: Then you said you went to the Ombudsman and her staff wasn't listening or she wasn't listening. I've heard you make comments to Mr Stewart, but what would you like to see on how to handle those situations? The Ombudsman definitely has a role she plays in complaints, and it is confidential, and I've heard your comments with respect to that. What would you really suggest happens if you feel politicians don't listen, if you feel the Ombudsman's staff doesn't listen? What do you really want done? What avenue will satisfy a case like yours in a situation where all this has happened?

Mr Aregers: The problem we've got here is that the politicians I had dealings with seem to use the Ombudsman to get rid of the constituent, the complainer. They know that nothing is going to happen, so they're using

this individual as a tool to shut the person up.

I understand what you're saying right now is that maybe I'm sounding like a complainer. But you've got to look at it as, 20 or 30 years ago this province was run nicely, like a nice clock. We don't need the Ombudsman. What we need is this criterion that the politicians, like the good politicians here, see their constituents, not certain groups. You know what groups I'm talking about: tree-huggers and all this, environmentalists. It should be open to everyone. If the legislation says, "This legislation applies to everyone," it should. I come to the Ombudsman and I say, "Look, this law is not applied to everyone," and provide photographs, reams and reams, and you've got 50 people going to him as a group, and he doesn't care.

1100

Try to understand. What I'm trying to say is that the law is there. I'm not saying break the law, but let's make it equal. If the law is not applied equally and it's used to take people's lands, there should be some recourse, accountability of the Ombudsman. If the Ombudsman goes to the Legislature or goes back to the politicians and says, "Hey, do your duty," gets in front of the Legislature and says, "Hey, what's going on here?" and if that's not resolved, a certificate should be issued to the individual to say: "Yes, the legislation or the province of Ontario is acting improperly. You've got a right to take it to court." A fine should be placed on the ministry, whoever is responsible, for compensation. You've got to have some

teeth in it so that the politicians — the lazy ones, I'm talking about — can't use the Ombudsman as a shield.

Mr Richard Patten (Ottawa Centre): I enjoyed your presentation very much. I think you made a number of suggestions and I'd like to identify some of those so that I'm clear on your understanding.

Off the top, I appreciate your comment about the MPPs' role. I must tell you that often when I speak with people they say: "What the hell do you really do? What is it that you do?" I say there are a variety of things we do, but one of the things I find I do in my own riding overall is that I feel like I'm an Ombudsman. I'm always dealing with situations of people who fell through the cracks or can't get through to the bureaucracy or the service doesn't fit them, even though there's an obvious need, and someone has been unjustly dealt with. I think a lot of the MPPs feel that way, that indeed that's the kind of role we play.

In one sense I suppose your observation is the growth and the complexity of government and how you get to them. In five and a half years, I can't recall ever having referred anybody to that office, because I think that's my job. If I see there's an injustice — and I can identify with the conservation authority issue of someone taking over someone's land because of a wetland issue or whatever it is — then I go to the Ministry of Natural Resources and I say: "What's the story here? What's your policy? What's it based on in terms of legislation etc?" We dig it out there and follow it up. My staff might do the follow-up, obviously, because I can't do a lot of the legwork on this. But your point is well taken.

If there wasn't an Ombudsman's office, the question that perhaps needs to be addressed is what structure of investigative initiative would take place to dig into some of these things, if you didn't have the capacity within, say, some of the MPPs' offices? If it didn't exist, do you think you would need some other kind of vehicle?

Mr Aregers: I would love to have you as a politician in my area, but still, let's wake up, let's go back. Let's have the politician take the time, an evening, advertise, talk to him — you've got a problem? — in front of people. What's happening when the individual comes into their office or speaks to their secretary is that there's no one there to witness it if the person is thrown out. But if it's done in a town hall meeting or when other people are there, the politician is going to be on his best behaviour. That's what has happened.

This is why we're having problems in Ontario. Let's go out and talk to the people as a group. Have your office open, and then we can weed out the bad politicians and we don't need the Ombudsman.

Mr Patten: You identified two things — I know I don't have too much time — which I thought were positive suggestions. One is that there should be an understanding on the part of the office — it would seem to me to be pro forma anyway — that when someone calls to say, "What's happening with my case?" I think it's incumbent upon whoever that is, or somebody, to be able to explain to you, "Well, here's where we are at the moment and here's our expectation and here are our next steps," and not just say, "We're working on it." I don't think that's good enough.

Mr Aregers: That's what's happening.

**Mr Patten:** I think as a committee we should perhaps note that point and pass this along to the office.

The other one that you made was the nature of the reporting from the Ombudsman's office in terms of when you ask a question, "How many cases come forward of complaints against conservation authorities?" I think that's a good question. I think the office should be able to report on a profile of: "Listen, we're getting all these cases from this area," which must indicate, or probably indicates, that there's a problem and there's something the committee should review or explore further and bring forward some recommendations for changes to the legislation or to the operations of that particular ministry, or whatever it may be.

I think that's a good suggestion that you had, some kind of profile of the activity, like who's coming to you, what are they asking and who's illustrating what? That, in and of itself, should say something about some of the areas that need some rectification.

Mr Aregers: But let's say I do find out — like a friend of mine, John Anga, has a similar problem. I want to go to the Ombudsman and check and see what they've done. Why is it so confidential? I like to see if they've done their work. Why is it so secretive?

**Mr Patten:** I think there should be that accountability: "Here's what we have done on your behalf."

Mr Aregers: No, but still, don't you agree that if there are another 10 or 20 people, what is wrong with my looking at the file? I mean, why?

The Chair: That effectively fills out our half an hour. Mr Aregers, thank you very much for assisting in our process.

Mr Aregers: I'm sorry I have to leave, but I've got to go back to work.

**The Chair:** That concludes the presentations for this morning.

## CASE OF MS C

Consideration of the Ombudsman's case report in the matter of Ms C and the Ministry of Community and Social Services.

The Chair: We now move to the next item on our agenda.

Andrew McNaught has prepared his report and it's been circulated to the members of the committee. I propose now to open the floor to discussion of that report, if there are any comments, and the appropriate motion in respect of the report as soon as anyone feels prompted to make such a motion. I'm happy to open the floor to discussion.

Mr R. Gary Stewart: Yes, I guess somebody may as well start it off. If you look at what has happened over the number of years by reading both the whole case study and so on and so forth, and after being able to get a little bit more information from the Ministry of Community and Social Services, it came to light, as I understand it, that when somebody goes in to apply for family benefits, the head of the family is decided by the two people and the head of the family is asked to sign the application

that he or she will be responsible to accept the cheque or to --

The Chair: Mr Stewart, loath as I am to cut you off, I'm going to suggest that we're not here to reargue the case, but to consider the report per se.

The case has been argued and decided, and the purpose of the report is to reflect and then summarize the hearings and the result. I'm looking for comments indicating whether the members are satisfied with the report as it stands, given that's the purpose of the report, or if there are any thoughts, concerns, submissions or recommendations concerning what the report should reflect.

Mr R. Gary Stewart: I guess what I was leading up to, in a long way about it possibly, is the fact that I believe the situation stands as it says now.

The Chair: Any other comments?

Mr Jean-Marc Lalonde (Prescott and Russell): I don't know if I would be out of order, but after we left the other day and also after reviewing the report, of which I'm in complete favour — it's exactly the discussion we had — I was wondering if the ministry would have the ability or the resources, whenever there's a complaint launched to the ministry office that the women were not getting their share or the husband was receiving — in 72% of cases it's the husband who receives the cheque at the present time and there's no way I can see that we could split the cheque, because there are other complicating factors we could be faced with.

I was wondering, if there's a complaint lodged with the office of the ministry, if the ministry could not put in place a type of investigation so that we could go on and investigate, and if it was true, in the future the cheque would be made to the wife instead of the husband. They would be advised that in the future they would be allowed to have the cheque issued to the wife instead of to the husband.

I don't know if you understand what I'm getting at. At the present time there's no system in place — when the cheque is issued to the male or to one member of the family, you have no choice; it goes there unless the people are aware that they can sign a form that the cheque will be issued to the woman instead, to the wife. In this case, if there was a complaint, the ministry could investigate and then if it was found to be true, from that point on the cheque is issued to the woman instead.

The Chair: I was seeking some guidance from the clerk. I'm going to rule, with all respect, that comment is out of order in this discussion.

Mr Lalonde: I was expecting that.

The Chair: That discussion didn't comprise part of the decision. It may be a recommendation that arises out of the decision and you may wish to pursue that, or this committee may wish to pursue that, but that is not part and parcel of what was heard and decided in this particular case.

Mr Jordan, I saw your hand.

Mr W. Leo Jordan (Lanark-Renfrew): I was just going to make the point that there is the opportunity, if both are entitled to benefits, to have it divided. That is there now.

Mr Lalonde: To have the cheque divided? Mr Jordan: Yes. That's my understanding. The Chair: I saw Mr Wood's hand.

Mr Len Wood: We had this debate the last day and I came to the conclusion that I was not going to support the committee as a whole. My argument was that where there is one case of discrimination, it shouldn't be allowed to happen. This was the argument from the Ombudsman. I supported her in her argument that if we allow one case of discrimination to continue, it would be one too much, and I voted against the recommendation of the committee. I think this is what we're actually dealing with.

The decision was made, and whether everything is covered in this report that was discussed around that issue, the vote was taken. I forget what it was, how many, but there was one vote against it. I think we should proceed on that, and if there's anything else that has been forgotten in here — I don't see anything, but if there was something it could be added in. Other than that, we've had the full discussion and the debate and I don't want to go through all the issues again.

The Chair: Any further discussion? Would anyone care to put forward a motion?

Mr Froese: I move that the report be adopted and that the Chair be authorized to present the report to the House.

Mr Lalonde: I'll second that.

The Chair: Mr Froese has moved adoption of the report. Any discussion on the motion? I'll call the vote then.

All in favour? Any opposed? Carried. Thank you all very much.

This meeting is now adjourned. The committee adjourned at 1115.

## **CONTENTS**

## Wednesday 29 January 1997

	mbudsman	
		B-82
Case of Ms C		B-86
STAND	ING COMMITTEE ON THE OMBUDSMAN	
	Mr John L. Parker (York East / -Est PC) Mr Tom Froese (St Catharines-Brock PC)	
*Mrs Barbara  *Mr Tom  *Mr Pat  *Mr Leo  *Mr Jean-Marc  Mr Rosario  Mr Bill  Mr John R.  *Mr John L.  *Mr Richard  *Mr R. Gary  Mr Bill	DeFaria (Mississauga East / -Est PC) Fisher (Bruce PC) Froese (St Catharines-Brock PC) Hoy (Essex-Kent L) Jordan (Lanark-Renfrew PC) Lalonde (Prescott and Russell / Prescott et Russell L) Marchese (Fort York ND) Murdoch (Grey-Owen Sound PC) O'Toole (Durham East / -Est PC) Parker (York East / -Est PC) Patten (Ottawa Centre / -Centre L) Stewart (Peterborough PC) Vankoughnet (Frontenac-Addington PC) Wood (Cochrane North / -Nord ND)  présents	
Mr Tim Mr Bruce	Membres remplaçants présents: Hudak (Niagara South / -Sud PC) for Mrs Fisher Smith (Middlesex PC) for Mr O'Toole Rollins (Quinte PC) for Mr Vankoughnet	
Clerk pro tem / Greffier par intérim:	Mr Todd Decker	
Staff / Personnel:	Mr Philip Kaye and Mr Andrew McNaught, research officers, Legislative Research Service	

CASON PROSX

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# Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 5 February 1997

Standing committee on the Ombudsman

Review of the Office of the Ombudsman

## Assemblée législative de l'Ontario

B-9

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 5 février 1997

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman



Président : John L. Parker Greffière : Lisa Freedman

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 5 February 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 5 février 1997

The committee met at 1008 in committee room 2.

## REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John Parker): Good morning, everyone. Welcome to this morning's proceedings on the standing committee of the Ombudsman, and welcome to Mr Cleary, who joins us today.

## DANIEL JACOBY

The Chair: Our first deputant this morning is Mr Daniel Jacoby, the Quebec public protector. Welcome to Toronto, Mr Jacoby. You have half an hour to make a presentation to this committee. You can use that time as you wish. Any time that is not spent in your presentation will be available to the members for questions and discussion. If there is time for questions, we will begin today with the third party. The floor is yours.

Mr Daniel Jacoby: Thank you. I will introduce myself. I've been the Quebec Ombudsman for nine years now, I'm at the end of my second term, so I've had to deal with many legislators. At the same time I'm the executive secretary of the International Ombudsman Institute, which regroups 86 countries and more than 140 ombudsmen in the world.

My task this morning is quite delicate for two reasons: I have to express the concerns of my Canadian colleagues regarding some proposals which are set out in the papers; and you will have to excuse my English at the same time, because it's not my mother tongue.

Mr Tom Froese (St Catharines-Brock): You are doing fine.

Mr Jacoby: At the beginning it seems to be fine.

You'll probably remember that last November my Canadian colleagues, the provincial ombudsmen, expressed their concerns regarding some of the proposals that could be interpreted as or constitute a narrowing of the independence or autonomy of the Ombudsman in Ontario. It is a major concern for the Ombudsman community and at the same time for laypeople. I have to tell you that I attended the last international conference of ombudsmen in Buenos Aires last November, and the ombudsman community saw problems in some Latin-American countries between the ombudsmen and the government. In the final declaration they stated that independence is one of the major characteristics of this post.

I'm happy to have the opportunity to express my views and give you my comments. But at the same time, in your 1993 report and 1996 report, generally speaking I would say that the concept of independence and the

concept of partnership between your standing committee and the Ombudsman seem to be two important tenets, two important principles. I remind you that the documents say that the Ombudsman and the committee share a common purpose: to provide people in Ontario with the most effective Ombudsman service possible. The committee wrote that you believe that the committee can design ways to strengthen the partnership between the Office of the Ombudsman and the parliamentarians themselves. I think it's a good direction which has been taken by the committee either in 1993 or last year.

The situation in Ontario is not exceptional. If I compare my situation with the Ontario Ombudsman, I have no standing committee in Quebec. It's not provided for by the statute. But two or three months after being appointed nine years ago I discovered that I had to speak to parliamentarians because I needed support. So the National Assembly modified its bylaw, and now I have a kind of standing committee to which I report my annual report and specific reports and some conclusions of investigations.

I would say that around the world about 50% of the ombudsmen can officially report to a legislative committee. A survey was made in about 48 countries around the world in 1991. I would say that most of the answers given by the ombudsmen are that they need the support of a legislative committee. I think only two or three said that the relationship between the office and the committee was less satisfactory. But I believe it's important for the Ombudsman to have a legislative committee for many reasons.

First, I believe that the committee is a good channel to communicate with the House because the Ombudsman reports to the whole House, to all the members, and this is a way to communicate with the parliamentarians. But I believe that one of the major problems with which an Ombudsman's office deals is that he has a moral authority. I believe that moral authority has to be maintained. I know that in some countries people ask for coercive authority, binding decisions, but I believe that the role of an Ombudsman is to try to convince the administration to review its own decisions where decisions are unfair or something like that. I think that the Ombudsman has no binding power but has at the same time moral authority.

If the office wants to be efficient and effective it needs support not only of the complainant — in many cases he has no support from the complainant. In my jurisdiction, when I investigate, statistics show that in only one case out of three the complaints are substantiated, justified. It means that in two out of three complaints I or my colleagues have to explain to people why they were not victims of unfairness. It's quite difficult, so we don't get

support from the public when we don't accept the substance of a complaint after an investigation.

We, as Ombudsman, do not necessarily have the support of the media when we make public comments, because the media are what they are. Freedom of press is important but at the same time they can't be in accord with what you say, whether you are the Ombudsman or not, and you know that because you are parliamentarians.

We don't get support, generally speaking, from the head of agencies or deputies. We have broad support, but many deputies, many heads of agencies tell me when I have lunch with them, "We wish that your post were abolished." I know them but that's what they think regularly because we are disturbing them as the auditor disturbs them, as parliamentarians disturb the administration and everything.

We don't have full support. We have a moral authority. I believe it is important for an Ombudsman to get support at least from the elected representative of people to whom the Ombudsman has to report. It is important because otherwise the moral authority, which is only a moral authority, won't lead to any success even though a recommendation is satisfying for any political party if the standing or select committee does not regularly support the Ombudsman. It would mean that the efficiency and effectiveness of the Ombudsman could be altered in a major way. So the Ombudsman needs support, and not only the Ombudsman himself but people working for the Ombudsman. To me it is important to recognize that there should be a strong partnership between parliamentarians and the Office of the Ombudsman.

It doesn't mean that the Ombudsman should not be accountable to the Legislature. I believe that independence is very important, but at the same time accountability is very important because the Ombudsman is elected or appointed by the government and paid by the taxpayers and he has to be accountable to the Parliament or authority to which he reports. Accountability means he sometimes has to accept remarks regarding the investigation of the way he performs or the way he conducts his investigation. I can tell you that in my jurisdiction I meet my committee perhaps three or four times a year, and it happens every time, from both sides of the House, that some of the parliamentarians tell me they don't agree with the fact that I've made an investigation in a specific field or they don't agree sometimes with the fact that I make public comments, but we have good discussions. We don't agree on everything, but I would say that, mainly speaking, there is a consensus around the table of the necessity to maintain the partnership between the Ombudsman and parliamentarians.

#### 1020

Independence is very important, and it's not an absolute principle. There is no definition of independence, but what we know and you know is that if the Ombudsman is not or does not seem to be independent he will have no credibility, but at the same time the House won't get credibility. Independence is a tool for the Ombudsman to be credible and to be efficient and to report adequately and accurately to the House.

Some of your proposals which are set out in the 1993 or 1996 paper led my provincial colleagues and the international institute to some concerns about the interpretation of some proposals. I will deal with specific proposals. I have tabled my document; it could be scholarly or whatever, but I will deal with some of the proposals.

First I will deal with the authority of the Ombudsman to make or not to make public comments. I believe it's quite delicate for an Ombudsman to make public comments, especially during the course of an investigation, or sometimes to try to get the help or the support of the media to implement a recommendation. It's quite delicate. In Quebec I would say that my statute gives me very wide powers of commenting. I know the situation here is quite different from Quebec. Here, if a denied case, where the government doesn't implement a recommendation, is examined by your committee, you act in a way like a court of appeal. I think that's a very strong tool, even though the committee doesn't give support to the Ombudsman for each denied recommendation. In Quebec we don't have that, so I have the power to comment publicly if an agency refuses to implement my recommendation with no explanation.

In Ontario the proposals in the 1993 document say the Ombudsman should have authority to make public comment except to try to have a recommendation implemented. I think it's a good exception because of the system here with the Legislative committee. But in the 1996 document there is restriction, compared to the proposal made in 1993. The Ombudsman cannot make public comment except if he tables a report, a specific report, I believe, to the committee.

There are very practical problems, I would say. In many cases, it could be in the public interest for people to know that the Ombudsman is investigating such-and-such dossiers. In these times when everything is changing, in Ontario, in Quebec and everywhere around the world, people have to be assured. People have a lot of fears regarding the decisions made by governments, budget restraints, cuts here and there, so if the Ombudsman — and that's what happened in my jurisdiction — has the possibility of saying yes, there is a problem with the administration of such-and-such a program — because the main problems are in the administration of programs, not in the conception of programs — people will be satisfied that someone is investigating the application of a program. I think that is very important.

If the Ombudsman has to table a report — I know parliamentarians are very busy and it's not easy to have hearings regularly. Therefore, from a practical point of view, I believe this could be a burden for the Office of the Ombudsman, to table a report before making public comments.

The second point is regarding the ombudsplan. I've noticed in the two papers, 1993 and 1996, that the Ombudsman has to discuss his plan for the forthcoming year. I have no problem with that. I believe it's part of the accountability of the Ombudsman to discuss with the members of Parliament the projects for the next year. But at the same time, I think the Ombudsman cannot bind himself with his plan. The Ombudsman is not the master of the agenda of the administration, and even though the

Ombudsman one year says, "Next year I will make a systemic investigation in such and such a field," priorities and circumstances could be changed because there are huge problems in another sector of the administration.

I believe it is necessary for the Ombudsman to report on his intentions for the coming year, but I believe that plan should not be binding because, with the lack of resources now, the Ombudsman needs to be flexible and able to modify the priorities during the next forthcoming

If it's not binding, it doesn't have to be approved, but it has to be discussed, as I do regularly with my committee in Quebec. Parliamentarians ask questions. Sometimes they don't agree that I intend to do this or that, but I give an explanation and my explanation, generally speaking, satisfies the parliamentarians.

The other topic I want to deal with is about the method of appointment. I haven't got a very specific comment about that, but there are two other major issues: the conducting of investigations and the estimates.

Most of the provincial statutes which govern ombudspeople provide that the Legislature or the committee may adopt rules for the guidance of the Ombudsman, but in fact, even though we find those provisions in the statutes, to my knowledge they have never been used. They have never been used regarding the way to conduct investigations, and they have never been used to impose any specific order on the Ombudsman. I know that in the documents there is not a formal proposal regarding the adoption of such rules, but there are concerns by the committee regarding systemic complaints and regarding investigations in the field of administrative tribunals. 1030

I want to tell you, if the committee adopts rules regarding the way in which investigations should be made, I believe the Ombudsman will lose his independence, of course, but practically speaking, he will be perceived by the population and by the government officials themselves as being an employee of the Legislature, which in fact creates the risk of altering his efficiency and effectiveness.

I believe the Ombudsman should keep his autonomy on what to investigate and the way he investigates. If he does something wrong, not acceptable, he will for sure be criticized by some member of the committee and he could be criticized by the complainant himself and by the media.

I think the Legislature should put some confidence in the way the Ombudsman conducts his investigation, whether a specific individual complaint or a collective investigation.

I have a concern about this and about the decisions made by administrative tribunals. In my jurisdiction I don't have the authority to investigate the decisions made by administrative tribunals. It's expressly excluded. But in most provinces, like here, the ombudsperson has this authority. I think it's a very delicate power given to the Ombudsman. The tribunals themselves — not necessarily the judicial tribunals, the court, but administrative tribunals — should in a way be independent; otherwise, they don't have any credibility. So it's quite delicate for

the Ombudsman to investigate complaints regarding a decision made by an administrative tribunal.

But I've noticed the way the Ontario Ombudsman's office deals with those cases from the beginning. I think the office respects that quasi-independence of administrative tribunals. He doesn't ask the tribunal to make another decision. He interferes only when the tribunal has the power to review its own decision and then invites, finally, the tribunal to review its decision. But the Ombudsman does not replace or is not a substitution for the tribunals.

Finally, I will end with the estimates. I'm going to tell you something about estimates. I am the only Ombudsman in Canada who negotiates his budget with the treasury board. It's paradoxical, in a way. I've asked in many reports to change the rules, and for reasons I'm unaware of, the rule is not changed.

But I tell you something: I have to discuss with the chair of the treasury board and his deputy. It's never been a problem, I would say. It depends on people sometimes; it depends on the philosophy of the chair of the treasury board regarding protection of human rights and the role of the Ombudsman, but generally speaking, I would say, I never had any problem.

I remember that five years ago I was asked to cut my budget 12% and to reduce my staff, so I said: "It's going to make a problem but I will change the way I conduct my investigation. I will make more systemic investigations in order to save energy." But at the time, the former government told me, "Now we'll leave you alone for many years." There has been a new government a few years ago and the new government had the same attitude towards me regarding my budget, so it's paradoxical, but personally I didn't have a real problem with discussing my estimates and my budget with the treasury board.

In Canada, generally speaking, the estimates are examined and approved by a committee. Here in Ontario, it's the Board of Internal Economy which discusses and approves the estimates of the Ombudsman and the estimates of other offices of the Legislature. I don't know if there is any problem sustaining the proposal made in the report to have the estimates of the Ombudsman discussed, examined and approved by this committee. I believe there must be reasons but I couldn't, reading the report and the rationale, understand why. So the question is, is it necessary to transfer the authority of discussing and approving the budget from the Board of Internal Economy to the standing committee? I don't know.

At the same time, I would say that if you do so, at the present time I believe that all the offices are treated fairly and equally by the Board of Internal Economy and I believe it's a good thing. I don't know of any office of the Legislature having its estimates approved by another committee of the Legislature, but I really don't understand the rationale and I'm not sure it could help the Ombudsman necessarily to have his budget approved by the standing committee.

I am finished my remarks. If you have any questions, I will be pleased to answer.

The Chair: Thank you, Mr Jacoby. Your timing was spot on. You've effectively consumed the half-hour available to you, so we'll leave it at that. Thank you very

much for your submissions this morning; they've been very helpful.

Mr Jacoby: Thank you.

Mr John O'Toole (Durham East): May we ask one

question? What is his budget?

The Chair: We're keeping everything to strict half-hour limits. If you want to have a private conversation, that's fine, but for the purposes of our proceedings we're keeping it to the strict half-hour.

Interjection.

The Chair: If that's acceptable to everyone, that seems like a question everyone would like an answer to, so certainly.

Mr O'Toole: Just one question: What is your annual

last budget?

Mr Jacoby: It's \$5 million, and my staff 80%, but I have only two offices. The head office is in Sainte-Foy, near Quebec City, and I have a small office in Montreal. There is a big difference between my budget and the budget of the Ontario Ombudsman.

Mr O'Toole: Thank you very much.

The Chair: To members of the committee, as I mentioned, our second scheduled deponent today is not here but I understand that our third scheduled deponent has arrived. I propose that we go straight to him as soon as he's available. He's not in the room at the moment. The clerk tells me that our third deponent is visiting elsewhere in the building at the moment. Do we know when he's likely to be available here?

He will be here imminently, I'm told, so we'll take a short recess.

The committee recessed from 1040 to 1051.

#### GORDON McGLONE

The Chair: We will reconvene. We are now joined by Mr Gordon McGlone. Mr McGlone, welcome to our proceedings this morning. You will have half an hour to make a presentation to this committee. You can use that time pretty much as you wish. Any time left over after you've made your presentation will be available to the committee members to ask questions or follow up on any points you've raised. The floor is yours.

Mr Gordon McGlone: I am pleased to be here this morning to greet the committee. I'd like to read out a statement I have. I provided you with a handout of what I'll be saying, and also some background history of my past dealings with the Ombudsman office, past dealings with the Ontario Human Rights Commission and past dealings with the Social Assistance Review Board. These are all avenues of appeal. The Human Rights Commission denied my human rights case, stating under section 34 that either the Ombudsman or the Social Assistance Review Board could more effectively deal with it. My case has still not been dealt with and it's been close to five years now.

I am pleased to be able to speak to the standing committee on the Ombudsman of Ontario. I'm speaking on behalf of myself and others with traumatic brain injuries.

I was severely injured in a motor vehicle accident in 1988 and substantially injured further in accidents in 1992 and 1993. My rehabilitation was initially through friends while I waited for my name to come up on the Ministry of Health and the Ministry of Community and Social Services lists.

Unfortunately, the Ministry of Community and Social Services did not respond to my needs appropriately so I was obliged to seek the help of the Social Assistance Review Board in hearings in 1993 to the present. In spite of an initial positive ruling, the director of vocational rehabilitation services refused to help and appealed the decision of the board. After a year of waiting for this appeal to be heard, VRS agreed to proceed with the decision of SARB and my rehabilitation program as outlined by my doctors. The VRS then bogged down further progress with continued red tape and delayed implementation of my program.

In despair, I filed a complaint with the Ontario Human Rights Commission. In 1995, the Ontario Human Rights Commission responded to my complaint, refusing to hear my case under section 34, stating that another division of government could better deal with my complaint.

I appealed to the Ombudsman of Ontario with the assistance of former MPP Zanana Akande. The Office of the Ombudsman refused to hear my case because they said there was another avenue of appeal still available.

Since then I've gone through another SARB hearing to no avail. The Ministry of Health has provided funding for my rehabilitation with various obstructions and catch-22 situations leaving me vulnerable and with little rehabilitation assistance. The VRS has stalled repeatedly in providing the help I need.

I am left without help, and the Ombudsman, who is supposed to be the last court of appeal, has refused to assist me because of the definition of its mandate. I would request that the terms of reference of the Office of the Ombudsman be broadened to provide better access for people with traumatic brain injuries and the multicomplex disabilities associated with this area of rehabilitation.

That's my brief, and I'm willing to entertain questions. **The Chair:** Thank you very much. We have about 25 minutes available to the members, beginning with Mr Wood.

Mr Len Wood (Cochrane North): First of all, thank you very much for coming forward and making your presentation and explaining your situation.

You're saying you'd like to see the terms of reference broadened further. Maybe we can get more detail on how far you think they should be broadened for the Ombudsman

Mr McGlone: What I would like to see through the Ombudsman's office — and with individuals such as myself who are suffering traumatic brain injuries and have disabilities, as a result of a disability and depending on the magnitude of your disabilities too, certain things have happened to me where I am now banned from coming into a place like this. I have to have an appointment to come in here, with a letter. I'm banned from the VRS offices. I'm banned from the social services office. I am not able to contact my workers.

I feel that the Ombudsman, even though there is a course of appeal — I won my decision at SARB. VRS has decided not to deal with it. They're saying they

didn't like that decision because they lost it and so they delayed it for another year.

In that delay, I just sat without any help whatsoever. They're going to appeal it. There's always an appeal available for the government. They have lots of money and they have lots of expertise and they have lots of the people who are working behind them to do it.

I'm on my own. It's very difficult for me. I've since then been able to graduate from university and I have still not gone back to a job yet. I want to integrate back into the workforce, but with all the catch-22s and the red tape, I am not able to get back into the workforce and I don't understand why this is such a hard thing.

I want the Ombudsman to come in and be sort of like a mediator to this because this is a problem that's ongoing. The Ombudsman's office is not going to deal with it, and they're the last court of appeal. I could go to Divisional Court, as they say at SARB too, but I don't have the money to take the government to Divisional Court.

So I would like to see it where Steven Drawbell, whom I talked with at the Ombudsman's office, and Jill Clark before that, before she went to South Africa, that we somehow be able to come and talk about it and get the decisions of SARB implemented and stop the Human Rights Commission from letting everything off on a section 34. I've watched the number of cases skyrocket under section 34 claims.

The Chair: I now look to the government caucus.

**Mr O'Toole:** Thank you very much, Richard, for your presentation.

Mr McGlone: Gordon.

Mr O'Toole: Gordon. Pardon me. Just a quick question. You mentioned just now that you are banned from various public offices or contact with people. Under what condition? Is this part of your health condition or is it just because of your frustration? Are these court orders?

Mr McGlone: Yes. They're from the police, the constabulary here, and the Speaker, who issued a warrant stating that I'm not allowed here. I've further gone to make an appointment with the Speaker, Mr Stockwell, today and hopefully I'm going to try to talk with him. I've done a lot of maturing over a couple of years. I do suffer from the effects of brain injury. Some of the complexities that I have with brain injury are that when I'm having to do all this stuff on my own, I get agitated, I get confused, I get disoriented, I become loud, belligerent and very difficult to deal with. This is the part of the disability that I have.

1100

Mr O'Toole: That's what I wanted to clarify. You claim that it's part of your overall medical condition that causes this situation and you're just frustrated with the process.

Mr McGlone: I'm very frustrated with the process. As I've put in my brief too, a substantial amount of money is put on the table by the Ministry of Health that I was able to receive from the former government and with all the catch-22s and the red tape they have there, I cannot touch any of it.

Right now, I'm driving in every day from Kitchener for my rehabilitation. This is up to a two-hour commute

during rush hour. This morning for me to come in here, it took two and a half hours to get here. The government — how insane it is — is paying for my costs of travelling to and from Kitchener at a lousy 27 cents a kilometre. When you look it up on the CAA guide, I should really be getting roughly 48 cents a kilometre for the wear and tear and what's happening to my car. They pay another \$193 a month for my parking. Then by the time I do get here, I'm so tired out that I end up just sitting around and nothing gets accomplished.

Mr O'Toole: Let me just kind of back up here. You did win your SARB appeal and so you're on the social

assistance program.

Mr McGlone: I'm on disability.

**Mr O'Toole:** A monthly disability. Are you on a Canada disability as well?

**Mr McGlone:** Yes, I am. Unfortunately, I was forced into the Canada disability pension from the former government.

Mr O'Toole: What's your total overall monthly income on both plans?

Mr McGlone: It's \$934.

**Mr O'Toole:** Total per month. Is that taxable? **Mr McGlone:** No tax. No, the CPP is taxable.

Mr O'Toole: Okay. Do you get —

**Mr McGlone:** But I get to write that back off again. **Mr O'Toole:** Your vocational rehabilitation service is all in Toronto?

Mr McGlone: Yes. What I was doing at SARB was arguing with the vocational rehabilitation services. They will not give me the services I need. I thought vocational rehabilitation services were to get you back into the workforce. When I was in university, I was saying: "How about a co-op thing? How about getting me into the workforce? How about letting me work with the government? Let me work for some other organizations. I realize I have some problems."

I came and talked at the standing committee on Bill 79. I gave some incentives back then. Maybe we can give a tax break to some companies that are willing to hire people with disabilities. When I do have an opportunity to get somewhere, they slam the door in my face.

**Mr O'Toole:** I'm a little off topic here because we're really dealing with the role of the Ombudsman and not your specific case.

Mr McGlone: I didn't want to deal with my specific case. What I wanted to do is bring this out under recommendation-denied cases. I don't understand how the Ombudsman can just say: "There's another avenue of appeal for you. You can go to Divisional Court." That is not acceptable, I don't think. I'm an Ontario citizen and I want some service from this government and the government is just disallowing me and it has made it very difficult for me. My hands are tied and I want the Ombudsman to untie them.

Mr Bill Murdoch (Grey-Owen Sound): It says here in the letter from Zanana Akande to the Ombudsman that you're banned from vocational rehabilitation offices on Dufferin Street and Queen's Park. Is that still?

Mr McGlone: Yes.

**Mr Murdoch:** Are you saying you are getting some rehabilitation or you're not getting anything right now?

Mr McGlone: Right now, I'm getting some rehabilitation at Columbia Neuro-Rehab, which is down the street at Dundas and University, through the moneys that I managed to get through the Ministry of Health.

Mr Murdoch: So we've got the Minister of Health in

here now too. That's a separate thing.

Mr McGlone: We have a complex situation here, because once you leave a hospital with a medical problem, you are no longer a Ministry of Health problem; you're a Ministry of Community and Social Services problem. These two ministries do not talk to each other and they will not work together. I've been trying to get the two to work together, and they will not work together.

Mr Murdoch: They're trying it now, but I hear what

you're saying, yes.

Mr McGlone: That's what I was trying to do with the

Mr Murdoch: Where you are at, you have the disability pension from community and social services and CP, but then you have Ministry of Health in some way helping you out with rehabilitation. That's where you're at right now?

Mr McGlone: Yes.

Mr Murdoch: But the main thing is to get something here. You should have had your day in court with the Ombudsman.

Mr McGlone: Yes.

**Mr Murdoch:** I'm trying to think whether —

Mr McGlone: I need the Ombudsman to come in and make a decision and make the governments go by the rulings of the SARB.

Mr Murdoch: The Ombudsman can't do that. The Ombudsman can only recommend to different ministries. I'm wondering, and maybe we should find out as a committee, what their reasoning is that you weren't accepted as a case.

Mr McGlone: I would like that.

Mr Murdoch: Because that's what we should look at first, if there is something preventing them. We may have to check that out, because all the Ombudsman can do is recommend. They can't make a government agency do something. They can recommend that that happens. They don't have all the powers that some people think.

Mr McGlone: But from what I understand, they have

legislative powers. They can come in —

Mr Murdoch: No.

Mr McGlone: Usually what they say, the committees

go by.

Mr Murdoch: The committee might and the committee may recommend — again, this is only a committee also. I make that quite clear: The Ombudsman doesn't have power to do legislation. Only the government has that, and that would have to come through a ministry. They can recommend to a ministry that they should bring something in and change it. That would have to go through the Legislature.

Can we find out, Chair — I just got this, so I don't see anything here — why the Ombudsman wouldn't take the case or anything like that? I think we should find out. There may be reasons and we should know them.

The Chair: That's a matter that the committee can consider. It's not part of this process here today.

Mr Murdoch: What is this process for then?

The Chair: This process today is focused on the report of 1993 as proposed to be amended by 1996.

Mr Murdoch: Sorry about that. I know, you're right. The Chair: But if you have any recommendations as to further activities the committee should engage in, we can raise that at the appropriate time.

Mr Murdoch: We can do that, yes. Right, I hear what you're saying. He's speaking just about the report that

was done three years ago. Okay.

Mr Pat Hoy (Essex-Kent): Thank you, Gordon, for appearing here today. The previous questions were all very good. Your main thrust, and you said it just a moment ago, was to broaden, to provide better access for people with traumatic brain injuries, and that's duly noted by our party here. What this committee is doing is looking at all aspects of a previous report in 1993 as to how the Ombudsman operates. Accessibility is one of those questions that we're looking at, accountability, confidentiality of cases, the Ombudsman reporting either to the government or to this committee or how that office should conduct itself.

I appreciate your view on accessibility to the Ombudsman's office and I'm quite sure the committee will be discussing that, along with other matters, as they pertain to reports in 1993 and 1996. Hopefully, we're going to have a better system at the end of all this discussion. I thank you very much for your presentation.

Mr John C. Cleary (Cornwall): Thanks, Gordon. I have just a couple of things I wanted to ask you. It said you were severely injured in 1988 and then reinjured in 1992 and 1993. Were you injured the same way in all accidents?

Mr McGlone: Yes, I was further injured in two more motor vehicle accidents. I just happened to be at the wrong place at the wrong time. None of them has been my fault. There is insurance involved with this

Mr Cleary: That's what I was getting around to.

Mr McGlone: With the no-fault insurance that was brought into place, my insurance company has taken the stance that: "Hey, this isn't our problem. You had a meeting with the government and the government said they would pick up all responsibility for this." So my insurance company has said the government of Ontario, if they want, can take us to court and subrogate all they want.

I don't see what the problem is here. I need services. I've gone through mediation with a lawyer for their insurance company and they said, "Too bad; the government's looking after that." I was a ward of the children's aid society prior to being injured. I don't know who to turn to.

Mr Cleary: The accidents were all with other vehicles?

Mr McGlone: Yes.

Mr Cleary: My second question is, how long ago is it since you've been banned from seeing the Speaker?

Mr McGlone: I've been banned here for almost three years now.

Mr Cleary: What year was the first time?

**Mr McGlone:** Back in 1994. I have the documentation here.

**Mr Cleary:** Had you tried to see any Speakers prior to 1994?

Mr McGlone: No. Actually, the banning came through when Al McLean was Speaker — when the New Democratic Party was in. I went to Chris Stockwell today, the new Speaker now, and I made an appointment to see if I can talk to him about my case, to see if I can have the ban lifted so I can come into this facility and take part in hearings and various other matters that go on here.

I was surprised last week, when I was watching the parliamentary channel, to see that there was a committee for social assistance dealing with long-term care. I did not know anything about this committee. I would have liked to speak at that committee, because that could have been a committee I could have had some very good input into, along with the megacity debate. I wanted to be able to speak at that. I tried to phone in. I wasn't even able to get through and I'm not able to speak at that. I want to say what I think about the megacity issues and stuff like that. With me being banned, I can't come in and make appointments and stuff like that. So if you can help me in having that ban reviewed, I would appreciate that.

Mr Cleary: I just wanted to find out what had happened. I thought maybe it had happened back in 1988

when you first got -

Mr McGlone: No, 1993, 1994, around that time.

The Chair: Did I see Mr Patten's hand? No? Mr McGlone, thank you very much for assisting with our process here this morning.

Mr McGlone: That's it? The Chair: That's it. Mr McGlone: Thank you.

The Chair: Our next deputant is Mr Jack Stapleton. Is Mr Stapleton in the room? We're ready when you are.

Mr McGlone: We go to court over this, to hand out these tickets or hand in our registration. We've gone to court three times, then the judge issues a restraining order not to come here. The amount of money we're spending is ridiculous. The mileage money they're spending on me to come down here is insane.

The vocational rehabilitation services do not have anyone involved there to deal with brain injury. They don't have anyone involved to deal with brain injury, then they can't understand when someone does get a little bit upset and a little bit loud. They don't know how to deal with that. They get scared, then they run and hide.

The Chair: Thank you very much, Mr McGlone.

Mr McGlone: Ms Akande did not run and hide, she gave me the help. That was one good thing that happened that time.

#### JACK STAPLETON

The Chair: Mr Stapleton? Good morning, Mr Stapleton. As with the others, you will have half an hour to make your presentation. You can use that time as you wish. Any time left over after your presentation will be available for the members to ask questions, beginning with the government party.

Mr Jack Stapleton: That's super. If you don't mind, gentlemen, I'll stand. Is that all right? Thank you, I appreciate that.

First of all, I am not well prepared. It's been 30 years since I've done any public speaking. I learned a little bit down at Ridgetown agricultural college when I graduated out of there. I'm going to turn on a tape recorder; there we go.

Well, it's February 5, and I've been on the road for a day and a half. I'm trying to reconstruct my family life. I come from Lambton county. I suppose you want to know why I would come down here to speak in Toronto, and I'll tell you why I did. It's called the Work of Citizenry, by Donald M. Stewart, from Vital Speeches of the Day, March 1, 1996:

"Choose to do the work of citizenry...whether on the Net, over the phone or, by God, even face to face, we must address the numbing injustices, the insidious barriers, the skewed opportunity structures, and the gross misinformation that so belittle our claim to be a proud" land.

That's what we're all about here. I hope you're here for that reason.

"No, the great social problems probably won't be solved in an admission office or a counsellor's workshop. But we all wear the badge of citizenry, no matter how tarnished from disuse, and enjoy its benefits daily.

"And we bear an added burden as educators, because democracy is a system uniquely confident in the educability of this fair race of humans.

"With or without affirmative action as we have known it, our future won't be bright unless we defeat the spirits of prejudice and discrimination all too present."

I'd like to give this to the chairman of the board right now. Would you pass that up? Thanks. It's going to be a long 30 minutes. I told you I wasn't well prepared.

I brought the Bible. I picked it up last night at a friend's place. I asked him to come. I didn't figure I was a pretty good speaker, and he's more conversant with the situation, but he has the flu. I thought maybe I'd pick a couple of Proverbs here.

"If a man returns evil for good, evil will not depart from his house. The beginning of strife is like letting out water, so quit before the quarrel breaks out. He who justifies the wicked and he who condemns the righteous are both alike an abomination to the Lord."

I don't know whether you gentlemen — maybe you are Christians and maybe you're not.

I brought a lot of information for you. I brought a Playboy magazine for you, an article. I won't show you the centre. You wouldn't think I'd read Playboy. It's right here, from March 1996. It says:

"The most coercive government sometimes is not the one in Washington, though it tries. It's more likely to be the one next door. These days the greatest threats to your pursuit of happiness come from your neighbours in the form of zoning boards, bureaucracy, planning commissions and pain-in-the-ass regulators."

Why would I mention this in front of the Ombudsman's committee? Last night I was listening to the radio. I had a flat tire. I couldn't move. I was at Woody's in Woodstock at 4 o'clock in the morning hoping I would

get things all gathered up and get all the paperwork down here and get copies done, at 3 cents a copy — that's the cheapest you can get that I know of — so I could present you something. Anyway, I'm at Woody's and I'm really sleepy, so I sleep and then my flat tire goes down. At Woody's, they turn the air compressor off and he doesn't open until 8 o'clock in the morning. I had to come down here with not much preparation. I'm losing every which way I can, but I'm going to speak to you from the heart. 1120

The reason for an Ombudsman is to protect the United Nations Universal Declaration of Human Rights. Speaking of the Ombudsman, I didn't know last night, at 4 o'clock in the morning, that I'd wake up in the morning and be listening about Finland, about the Ombudsman doing his work there. That's his job. It isn't what power you give him. The power you give him is turned around; it's authorizing him by the Universal Declaration of Human Rights of the UN. The signature by the government of Canada to the Helsinki accord is to make the Ombudsman capable of addressing insidious barriers and skewed opportunities; people who work under the cover of law, people out to destroy people; to prevent acts of torture from happening — acts of torture in this country. That's the purpose.

That isn't the only article. I wish I could present it all to you, but you probably would get hung up on some of the other sections of the article, so we'll go on.

I've got a Policy Implementation and Compliance with Administrative Law right here. On page 26 it says, "Presents legal protection," part (b):

"In contrast to the protection of physical integrity, an examination of provincial, federal, international and foreign laws reveals a lack of systemic and organized protection of psychological integrity. As we will note later, protection of psychological integrity poses, for law, difficult problems of evidence. It is relatively easy to establish material.... On the contrary, it is difficult, and sometimes impossible, to establish the impact of psychological interference."

The boy who just left: psychological interference. He can't get any help. He's frustrated, banned from here.

"Even in its relationship to certain physical symptoms, it may be consonant with the rules of evidence.

"On the international legislative scene, a certain number of documents indirectly relate to this question: the United Nations charter, the Universal Declaration of Human Rights, the international covenant on civil and political rights. All recognized such fundamental rights as the rights to life, liberty and to refuse to be the subject of experimentation.

"These rights, however, are not precisely defined. Arbitrary detention, for example, would probably be seen as an infringement on fundamental freedom and thus be protected. Similarly, physical abuse or humiliating and degrading punishments would surely fall within the ambit of these texts. What is not certain, however, is that situations involving psychological interference in the absence of physical assault would fall within their scope."

That's what this Ombudsman does. He is to protect people from this government. He is to protect them from the skewed opportunities that this government uses. You're the committee that operates here internally.

Mr Stapleton: The basis of the committee — its mandate is to turn around and work under the charter of the United Nations. That's the way I've got it figured. As a signatory of the United Nations declarations and being under United Nations power, you were trying to establish a person or an entity or something to give them the opportunity to mandate the international covenants. Would I be wrong? Do you think I'm wrong, John?

Mr Cleary: We're just going to listen to your presentation. If you have any time after, we'll ask questions.

Mr Stapleton: Fine; all right. Don't dodge me.
Anyway, this is what we're trying to talk about. I
realize we have a thick book right there; I didn't bring it
with me. It was with the other person. He had the flu and
I didn't want to catch the flu.

I left the dog. I carry my dog with me; he is very important to my life. Anyway, I didn't want to bring Dawson to Toronto because he might get lost. Consequently, I left him with Herman and Andrew, or I thought I did. I left him at some other location, but when I went there, he wasn't there and he wasn't in the back seat.

Why would I bring this up? The situation is, I told you I wasn't very well prepared for this speech. How much time have I got left, John?

The Chair: Oh, about 15 minutes.

Mr Stapleton: There you go. Tell me when you want to cut it short, when you want to go to lunch.

The Chair: You're doing fine.

Mr Stapleton: Anyway, we have so much evidence here of opportunities that are being destroyed. Last week I had to fill out a form 2. What is a form 2? It's an information sheet like this. You make out the information sheet. You turn it around and sign your name down here, and it makes it a legal document by virtue of the fact that it is signed by a judge. You swear that it's true.

On the "20th day of January 1997" — and I'm not blowing here — "this...information...John J. Stapleton, disabled, hereinafter called the informant.

The informant says he has personal knowledge and reasonable and probable grounds to believe and does believe...." It's stated: "I, John J. Stapleton, do hereby swear that:

"(1) Evidence brought to me relates to the necessary acquisition of other documents and opportunities to prevent the continuing injustice of one Betty Baptie of 131 South Vidal Street, apartment 7, in the city of Sarnia, in the county of Lambton.

"(2) Such evidence brings about the necessary acquisition of legal opportunities that our such offices have been served warranted by the province of Ontario and other jurisdictions.

"(3) Such information and documents shall be returned" as signatory "of the informant to make a play call." That's what I'm going to do. I'm going to try to make a played call here, whether or not they did do this to this person.

"(4) Subject has been violated, her due rights under the United Nations Universal Declaration of Human Rights and the Canada bill of rights....

"(6) Proper legal authority shall be informed to alter the course of events so that she may not continue her suffering." I did not want her to suffer any more. "Please respond forthwith due to this emergency and gravity of this case."

I'll pass that up to you, John.

1130

Interesting: We think the Ontario Human Rights Commission is all-powerful and turned around and made selective, but we were having a discussion about that and I suddenly realized that it had been made selective. They went race, colour, creed, the whole nine yards, but they had forgotten discriminatory application of law.

I never thought I'd be here and I'm sorry I've come in here, really sorry, but I got sent here. You just wait a minute, boys. Get yourselves a drink of water or whatever you want to do. Personally, I like to go out and have

a cigarette. I got sent here by a poem:

Take up our quarrel with the foe:
To you from failing hands we throw
The torch; be yours to hold it high.
If ye break faith with us who die
We shall not sleep, though poppies grow
In Flanders fields.

That's why I'm here. That's what it's all about. It's to avoid, turn around and stop this type of Fascism. I've got a copy of Fascism, the whole book right here. I got it down here on — what's the name of the street? — College. It's down here at College, over at the bookstore. I've got the whole book right here. I haven't got a copy and I hope I haven't violated — it's not with intent to violate this man's opportunity to make his discourse. But I think you ought to go down and get one.

They talk about social Darwinism, Chamberlain and Rosenberg and Hitler and Mussolini and then they turn around and conveniently say, "Fascism in action." Boy, have we got it here. We've got it running over here like cancer all over the bodies. When I was coming in, on the radio I listened to a commercial about diabetes and kids. In 1966, four out of 25 were saved from diabetes. In 1997, we've got 18 out of 25 who are saved from diabetes and we're making progress in diabetes. But guess what? This government and this country are going backwards.

In the year I was born, 1945, the war was over. We had defeated Fascism. The United Nations had got together and they had turned around and formed an entity to defeat Fascism. There was a war on. Sons, families, brothers, sisters, whatever your family did in this country, they did it in order to beat Fascism, but guess what, boys? I'm not being disrespectful of you gentlemen. It's coming back, it's slowly, subversively coming back, and that's the importance of the Ombudsman. That's the importance of looking at it in a different direction. That's the importance of not disabling his opportunity. We need you people to mandate his opportunities in order to protect from these insidious injustices.

I didn't use a highlighter on that, so I can't pick out the passage in here, and I will be glad at a later date if that's all right with you, Mr Parker, to provide you with

a copy of this.

The Chair: There is a deadline for submission of materials. I'm not sure what that deadline is. I'll have the clerk make you aware of it.

**Mr Stapleton:** Let me run down there for three cents and I'll make you the copy, because it's the only copy I've got. Have I got to noon?

The Chair: Wait for the clerk to come back and

maybe he could help us out.

Mr Stapleton: All right. That's neat. Okay, gentlemen, how much time have I got left here?

The Chair: You have about five minutes.

Mr Stapleton: I guess I'll summarize it up. I told you I was from Lambton county. That's correct, and my tape recorder is doing pretty good. I was at the town meeting, and State Senator Ben Alexander was the moderator, in Durango, Colorado, on May 18, 1995. What happened there is they're worried about their property rights, the right to make a living, the right to be alone, the right to turn around and be able to live, the right to do whatever they want to do as long as it was within legal methods.

Basically they said there that they want to live under the United Nations declaration of rights. So do I. Not in this country, no way, not after they got done butchering my family. You butchered my family. We were in this country for 140 years and still are. They did a nice job. I went everywhere to be protected by United Nations

declaration of rights, not to be tortured.

I went everywhere I could possibly go. I went to David Crombie, to the former Governor General of Canada. I went to Mr Ferguson's office. I went to Mr McEwen's office. I went to every lawyer I could find and every one I could afford, but I couldn't defeat Fascism. No way, impossible. I didn't know what an Ombudsman was. It wouldn't do me much good because the Ombudsman would say: "You're not the right colour. You're not the right sex. You're not the right person. We need somebody who qualifies the way this committee" — the general committee — "set it up."

Today, because of the situation of the closeness — you see, I can hit the computer. I don't run a computer but I can have somebody hit the computer and I can talk to somebody in Beijing, I can talk to somebody in Moscow, I can talk to somebody in South America, Juárez, Mexico — bing, bing, bing, bang, zoom, it's done, and now you're under the scrutiny of the world. We're not going to forget what happened. They say that you're tried by your deeds.

Gentlemen, I got yesterday's paper: "USA Lawyers Say Pause in Executions." Do you know what that's about? Now they turned around and decided that the wholesale slaughter of people in jails is not exactly in their best interests under international covenants since San Antonio, Texas — nice town, I've been down there about four or five times. I'm a lot better mentally there than I am here, guaranteed.

1140

"Fundamentally, this due process is now systematically lacking in capital cases," says Leslie Harris, chief sponsor of the ABA resolution — American Bar Association resolution — "Racial bias also taints the system," she said. "The resolution was opposed to the justice system as well as the ABA president Lee Cooper, of Birmingham, Alabama."

Basically what they're finding out supersedes the situation, that now the information is getting out.

The Chair: Mr Stapleton, I point out that you have about one minute left.

Mr Stapleton: Well, I can end this with a Chinese proverb. How does it go? "If a man wants to move a mountain, the only way he can do it is with a small rock in the beginning." That's what I've given you, the first drop of water from me to you.

The Chair: Mr Stapleton, thank you very much for appearing before us this morning. Thank you for assisting

us in our process.

You asked about submitting documents. The clerk tells me there's no deadline per se. These hearings will wrap up next week, so if you're able to get documents to us by this time next week, that will be fine.

Mr Stapleton: I notice you don't have any questions. The Chair: We've run out of time.

#### CHRISTOS KOURTSIDIS

Members of the committee, the clerk tells me that Mr Christos Kourtsidis was scheduled to be with us last week. There was a mixup and he didn't appear. He's here today from Windsor, so he's come here at some inconvenience, and he was hoping to appear before us today. I'm in your hands as to how we proceed.

Mr R. Gary Stewart (Peterborough): We have 15 minutes, Mr Chairman. I would make a suggestion that we hear him when he's come this distance. I request

unanimous consent, if possible.

The Chair: Is that satisfactory to all parties? Okay. Mr Kourtsidis, you're heard the committee. Sorry about the mixup, but the committee is happy to hear from you. We have 15 minutes on the clock that we're happy to make available to you.

Mr Stapleton, I wonder if you could move away from

the table.

Mr Stapleton: I'll be glad to, sir. He was turning around addressing me and I was answering a question.

The Chair: I appreciate that.

**Mr Stapleton:** I apologize that I'm holding up your procedures.

The Chair: Nothing of the sort. As soon as you step away, then Mr Kourtsidis can address the committee.

Mr Kourtsidis, we're happy to begin whenever you're ready. We have 15 minutes available to you to use as you wish

Mr Christos Kourtsidis: I gave you copies of the one side. I'm a little bit frustrated with the Ombudsman's role. I wish I had more time to speak with you and answer some of your questions about where I'm wrong and what I'm doing, and the answers are coming to the negative. I have to have a little more time.

The thing is, those copies, you see the conflict I had with the Ombudsman and with the worker adviser, the compensation circle, one page here — it was published in the newspaper report from the Ombudsman of Quebec. Mr Jacoby's report recommends a citizen's charter of rights enshrining principles of transparency, justice and accountability to public officials.

I don't know why the Ombudsman of Ontario doesn't say something like that, or I believe he falls to accusations like the Ombudsman of Quebec. If not, you can see I have in a letter the conflict I have with the worker

adviser. He threw my file out of the thing in which I believe my file has a place. If he wasn't satisfied with my file, he could have gone home and left my file there. He sent a letter to his secretary saying that if I call, "Tell him I'm busy." I keep calling the compensation board and the Ombudsman has a system known to them and they say that no, that's not existing, although it's very public and you can see it.

On the other side, the worker adviser says in the letter that I withdrew from them. I didn't withdraw from them. I want them either pro or against me, that we appear in the tribunal and the Ombudsman is a witness of that. I signed an authorization to them and sent it in front of the worker adviser and the worker adviser is lying on all occasions.

She sent a letter to Mrs Iacobelli, and Mrs Iacobelli said I received authorization from Mr LaPorte, but she doesn't say what Mrs Iacobelli told them, the truth, neither Mr McCaffery. Mr McCaffery asked her to represent me. She said, "No, I'm not going to represent him." Mr McCaffery didn't tell her that I didn't sign an authorization.

The main thing is that the Ombudsman says I didn't give them authorization, which they agreed with, the authorization. The first time I went to the Office of the Worker Adviser and I signed that authorization, I called them back and told them I had signed the authorization. They said I didn't sign authorization. You can see the Ombudsman's — the tribunal's words, the counsellor,

respond to both of them.

One thing is that when I went to the worker's adviser and I asked them to represent me, and I said I want to go to the tribunal and finish with everything so I don't have to go back, he says, "I'm to represent you on the two issues." I said: "Two issues? You make two issues. I have 10 issues and I want you to represent me on all 10 issues." He says, "No." I said: "I am the one who wants the representation. Whoever told you to represent me on two issues, it's his own problem, not my problem. My problem is the entire file." He said, "No, I cannot represent you on those two issues," and he sent me the file home.

When he sent me the file home and I saw the note, I was frustrated. I went out of my way sometimes and I feel everything bothers me in these circumstances. I said an anglophone waits 10 times more than an allophone even when they are right and we are wrong.

I talked to the worker adviser to tape the conversation. I taped the conversation and went to the Ombudsman and spoke to this man. I said to him that an anglophone scores 10 and who scores zero, and he purposely, the way we were talking — he had no right to take the tape recorder, to put it on his head. He had long hair and he erased the tape purposely.

There is no doubt there are mistakes. That was not a mistake. I asked them to change this man, and my son suggested too that I have to pick up someone else and have my choice to pick up. They refused to give me

another one to replace him.

They say they re fair. Who can judge their fairness? This man who erased the tape told me: "What can you do? Tell me, what can you do?" I said I can do nothing. You cannot take the workers' compensation people and

the Ombudsman to court. Even if you take them to court, we are poor people who cannot go to court. We have no access to the courts. We need money. How can we get to the money? Where are you going to complain? You are going to the same comrades.

1150

The questioner questioned the counsellor of the tribunal and he sent me that report, what questions he said to the counsellor. He didn't send me what answers he's got from that tribunal counsellor, the Ombudsman. I believe we can have something more than the Ombudsman offers. The Ombudsman is a comrade and they stick together and they don't give us the help we need. Honestly, they don't give us the help we need. That's the way it feels. I have nothing else.

The Chair: Thank you very much. You've left us with about five minutes for questions, beginning with the

opposition caucus.

Mr Hoy: Thank you very much for your presentation this morning, sir. I appreciate it very much. You've given us some material here that I'm going to have to read through, but I think, similar to a gentleman who spoke earlier this morning, you're looking for broader access to and help from the Ombudsman.

**Mr Kourtsidis:** Not only more access, more honesty. We don't find honesty in the Ombudsman. There is no honesty in the Ombudsman. There is not the office that can tell you that you are right and that will do what they can. They listen to your questions and they intimidate you later on. Those letters, I believe, that I didn't sign an authorization are intimidation. They are not true, honest words face to face between two men.

When my son wrote him and said you have to leave that and somebody else takes over, they refused to change him. Then another person answered that letter -I didn't sign authorization. It's Mickey Mouse, like the government does, the compensation does, changes one worker here and one there and leaves you in the half and say, "Oh well, I forgot," or "She's not here any more. We don't know where she is." If you go back to find her inside the office, she says, "I don't remember." Instead of answering the letter that I didn't sign authorization, Laura answered it and said, "You didn't leave an authorization." If you say I answered, I signed authorization, she says, "Oh, I didn't know." What can you say?

The time I went for that complaint, she was there and the chairman was there. One of the lawyers — sometimes I see this man. I am not different from him. I'm frustrated sometimes and go out of line with threats and profanities. You hit the wall and there is no exit on both sides and you are frustrated and you sound unreasonable. Everything bothers you, everything comes out of your mouth and spells it out. I'm not allowed to go there although I've never touched anybody. I spoke profanities or threats but I've never touched anybody. I never carry any weapon to show that I mean threats. My words, when I tell you I'm going to kill you — to the end I said, "Tell

me, what can I do?" I said "I'm going to kill you," to show you my frustration.

Mr Hoy: Thank you very much.

Mr O'Toole: Just to understand, the letter from the Ombudsman's office stated that you still have the opportunity to go the injured workers' department. Is that

Mr Kourtsidis: Adviser.

Mr O'Toole: Adviser, yes.

Mr Kourtsidis: I don't have that letter, no. It's the worker's adviser?

Mr O'Toole: Yes, the Office of the Worker Adviser.

Mr Kourtsidis: She doesn't want to come there.

Mr O'Toole: No. no. The Ombudsman doesn't have a role in this. You still have the opportunity to appeal to the worker adviser.

Mr Kourtsidis: About a month ago the worker adviser wrote me a letter and told me about that and she wouldn't represent me. If you phone the counsellor who is in the tribunal, he knows the whole event. I take a letter from the Ombudsman and I send it to him. I take a letter from him and send it to the Ombudsman and vice versa. I provide the communication line. I sent it to all of them to understand what I am saying.

She won't represent me. She sent me the file and she told me I'm debating the drafts from 1971 to 1974 and she said something to the effect that the increase was 2%, 4% and I overpaid. The increase in the second year was 10%, 8% in 1972 and 12% in 1973 in legislation amendments. She says I overpaid 4%, 2%, but she says the

increase was 4% or 2%. That's not true.

Mr O'Toole: Are you on compensation right now?

Mr Kourtsidis: Yes, sir. **Mr O'Toole:** For how long?

Mr Kourtsidis: I injured myself in 1966, and from 1970 I didn't work. There is another thing. One of the doctors that I have - I carried water and I broke my neck and with that thing, I have a neck injury and my lawyer is pursuing it now. I call those doctors evil people. This guy is evil. He said, "There is no fracture." Everybody can see it. I have a film of the fracture. It is here. Anybody can see the fracture. You don't have to be an expert to see it. All the doctors I've seen said the same thing, and I went to the College of Physicians and Surgeons and told them that they blackmailed me and I went to the board of health.

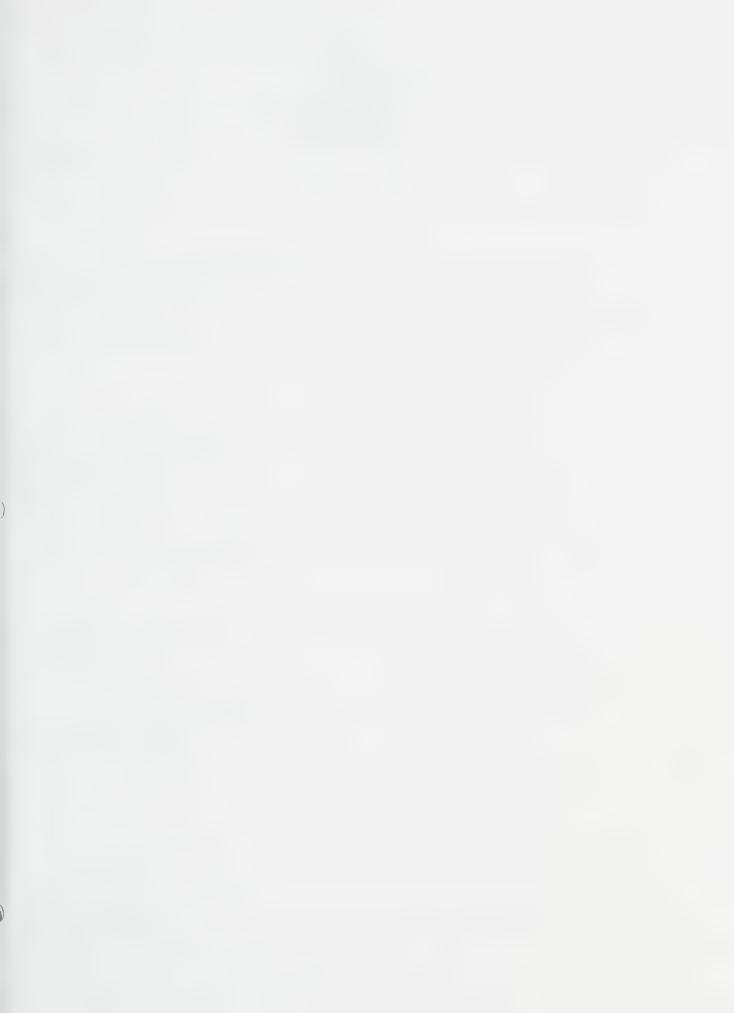
I had the reports and I pursued only one more doctor, a Pakistani doctor. I felt he was the instigator. I didn't want to see any other doctors because the other doctors had the same report, one accusing one and don't accuse the other.

The Chair: Mr Kourtsidis, that takes us to the top of the hour. We're out of time this morning. Thank you very much for appearing before us this morning and for assisting with our process.

This committee stands adjourned until next week.

The committee adjourned at 11:58.





#### **CONTENTS**

#### Wednesday 5 February 1997

Mr Daniel Jacoby	DING COMMITTEE ON THE OMBUDSMAN	B-89 B-92 B-95
Chair / Président:	Mr John L. Parker (York East / -Est PC)	
Vice-Chair / Vice-Président:	Mr Tom Froese (St Catharines-Brock PC)	
Mr Carl	DeFaria (Mississauga East / -Est PC)	
	Fisher (Bruce PC)	
	Froese (St Catharines-Brock PC)	
	Hoy (Essex-Kent L)	
	Jordan (Lanark-Renfrew PC)	
	Lalonde (Prescott and Russell / Prescott et Russell L)	
	Marchese (Fort York ND)	
*Mr Bill	Murdoch (Grey-Owen Sound PC)	
*Mr John R.	O'Toole (Durham East / -Est PC)	
*Mr John L.	Parker (York East / -Est PC)	
*Mr Richard	Patten (Ottawa Centre / -Centre L)	
*Mr R. Gary	Stewart (Peterborough PC)	
*Mr Bill	Vankoughnet (Frontenac-Addington PC)	
*Mr Len	Wood (Cochrane North / -Nord ND)	
*In attendance /	présents	
Substitutions present /	Membres remplaçants présents:	
Mr John C.	Cleary (Cornwall L) for Mr Lalonde	
Clerkpro tem /		
Greffier par intérim:	Mr Todd Decker	

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service





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### Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 12 February 1997

Standing committee on the Ombudsman

Review of the Office of the Ombudsman

Chair: John L. Parker Clerk: Lisa Freedman

## Assemblée législative de l'Ontario

Première session, 36e législature

# Journal des débats (Hansard)

Mercredi 12 février 1997

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman



Président : John L. Parker Greffière: Lisa Freedman

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 12 February 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 12 février 1997

The committee met at 1008 in committee room 2.

#### REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John L. Parker): A quorum now being present, I call this meeting to order. I welcome everyone here this morning.

#### **RON ELLIS**

The Chair: We continue with our hearings this morning and our first witness is Mr Ron Ellis, chair of the Workers' Compensation Appeals Tribunal. I welcome him here this morning. Mr Ellis, you have half an hour. You can use that time as you wish. Any time not spent making your presentation will be available for the members to ask questions, and this morning we will begin with the opposition party.

Mr Ron Ellis: Thank you, Mr Chair and the committee, for this opportunity to comment on the 1996 working paper and the 1993 report. I am chair of the Workers' Compensation Appeals Tribunal. I am also past president of the Society of Ontario Adjudicators and Regulators. better known perhaps by its acronym, SOAR. It is important, however, that the record be clear that I am not here to speak on behalf of either the tribunal, my organization, or SOAR. The views that I expressed in my earlier, written submissions to the 1993 review were personal to me and my comments today also reflect only my own personal views.

There are two reasons, I think, for the committee seeing my views on some of the issues here of some particular relevance and interest. In the first place, the tribunal of which I am the chair does a lot of business with the Ombudsman. We are currently releasing about 1,200 to 1,400 decisions a year, and each year I believe about 60 of these become the subject of complaints to the Ombudsman. A few of these become the subject of a tentative adverse conclusion, and in one or two instances each year, these lead to the tribunal's changing a decision that

Our working relationship with the Ombudsman, which is an excellent one, was described in my earlier submission, which I believe was marked as exhibit number 2/02/043, and it was the subject, I was pleased to see, of some positive comment in the committee's 1993 report. The reference there is to page 46 of that report.

The second reason I think my views may be of some particular interest and relevance is the fact that I've had a number of years' experience in managing a tribunal which, like the Ombudsman, has a mandate for independent decision-making and one that is roughly the same size as the Ombudsman's organization.

I propose to use the Ombudsman's response to the recommendations of the standing committee as the agenda for my comments. I should hasten to add that it's not my intention to offer comments on each of the committee's recommendations. There are only a few of them on which I feel I have something of potential significance to say, but I will come to them in the order in which they appear in the Ombudsman's response.

I will start with recommendation 1 at page 2 of that document. The recommendation is that the committee consider "whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of

a systemic nature."

I have two comments on this recommendation: First. for a small tribunal, the intervention of the Ombudsman in the tribunal's policy-making business can be very powerful and intrusive. I attempted to describe that view of the matter in the earlier submission and it appears at

page 6 of the 1993 submission.

The Ombudsman has the power, if one doesn't agree with her policy recommendation, to report to the Premier and to the Legislature, both of which have significant control over the tribunal chairs, and the tribunal members' reappointments. She also has the power to decide to embark on a full-scale organizational audit. Both of those options, in the hands of one of the contributors to a policy discussion, make it very difficult for her not to play a dominant role in that kind of discussion if she were to choose to do so. It is my view that circumstance — the power imbalance, if you will, between the Ombudsman and a tribunal faced with a policy dispute — calls for careful control of the exercise of that power to engage in systemic investigation. I think a set of rules governing that exercise would be important.

Second, where the systemic investigation is in the nature of a general operational audit or organizational review, as, for example, the Ombudsman conducted concerning the Human Rights Commission a number of years ago, it is essential in my view that the tribunal under investigation have specified and acknowledged rights to participate in the development of the review plan to contribute during the review process and to have the opportunity to respond to the developing report while it is still in the draft stage.

This is an area, therefore, where I believe there is particular need for the formulation of rules. For a set of rules governing the rights of involvement of a subject tribunal in an outside investigative auditor review I would strongly recommend to the committee the rules which the Ministry of Labour has developed governing the sunset reviews of its agencies. That is a document that I believe was established in the spring of 1994, and if the committee were interested, I could provide a copy of that document. I think it might make a contribution to the consideration of what kind of rules might be indicated in this particular area.

Then at page 5, dealing with recommendation 3B, there is reference to the need to make information about the Ombudsman available at public service contact points. WCAT, of which I am the chair, does not offer this information to all parties at our contact points, but where we are dealing with a worker or employer who is particularly unhappy with a tribunal decision, we regard it as a routine matter to suggest to that party that he or she may want to refer the problem to the Ombudsman. This has not seemed to present any particular problems.

I believe, however, that to give all losing parties information concerning the services of the Ombudsman would be seen to constitute an invitation by the tribunal to further litigation of the issues and I think that kind of policy would be viewed with concern by the winning parties. We have a mandate to deliver final decisions and I think it would be somewhat inconsistent for us to deliver a final decision on one hand and a brochure about the Ombudsman's ability to investigate that decision with the other. I think there are some problems that need to be examined in terms of making that information available, when and where and by whom.

At page 14, committee recommendation 12, which deals with the power of agencies to reconsider and the necessity of having that power to deal with the Ombudsman's recommendation for reconsideration, or a criticism of the tribunal's decision, the Ombudsman's response on that page refers to the need for notice of the Ombudsman's recommendation that the tribunal reconsider its decision to be given to the parties to the tribunal's original decision and to give those individuals the opportunity, and I quote from the Ombudsman's response, "to make representations respecting the reconsideration of the decision."

There is a potential ambiguity here that needs to be cleared up. The problem is with the word "reconsider" or "reconsideration," which is inherently ambiguous. In common usage, "to reconsider" means, I think, to change, but it also is a word that describes a process of rethinking or rehearing which may not necessarily lead to a change. Before one embarks on a process of reconsideration or rehearing, one must first decide whether or not to do so, whether or not to reconsider in the sense of whether or not to reopen a final decision and commence the reconsideration process.

1020

In our situation, after a final decision has been rendered, one party has won and the other party has lost, and the winning party has achieved certain important rights by reason of that final decision. It should not be a matter of inconsequence that that decision be reopened and subject to the uncertainty of further process without there being some consideration of the advisability of reopening and commencing a reconsideration.

Thus in our case, the opportunity we give the parties to make representations respecting the reconsideration of the decision, to use the words of the Ombudsman, is a two-stage opportunity. First, we invite representations on whether or not it is advisable to reopen the decision at all and commence a rehearing process. Secondly, and only after the tribunal has decided that yes, it is advisable to reopen the decision and reconsider it, then an opportunity to make representations as to whether or not, after the rehearing process is complete, the original decision should or should not be changed. It will be essential that any rule governing the parties' rights in this respect distinguish carefully between the threshold question, as to whether the reconsideration process should be commenced, and the reconsideration process itself, and the ultimate result of the reconsideration process, which might be a decision not to change the original decision.

This ambiguity has been a vexed problem with the tribunal's handling of its reconsideration process and has been the subject of discussion with the Ombudsman during the development of the protocol that applies between her office and our office today. She had an interest in having her recommendation moved be the occasion for reopening the decision as an automatic thing and having the tribunal embark on a rehearing.

We have always taken the position that we have an obligation to consider whether, in light of the Ombudsman's report, it is advisable, against the criteria that we have established for that purpose, to reopen the decision at all, and we continue to have that two-stage process even when the Ombudsman is recommending a reconsideration.

I'm just concerned than any language and rules that develop pay attention to that often-missed but very important ambiguity in the concept of reconsideration.

Mr Richard Patten (Ottawa Centre): It's good to know that somebody understands what it says.

Mr Ellis: That might be overstating the case a bit.

Then at page 16, recommendation number 14 — this is whether or not "to formulate rules to govern how the Ombudsman conducts investigations of tribunal decisions" — I believe the protocol that now governs the Ombudsman's investigation of WCAT decisions, which I described at pages 3 to 5 of my January 1993 submission and which is referred to at page 46 of the 1993 report, would be a reasonable starting point for a set of rules governing the investigation of tribunal adjudicative decisions

Whether that practice would be appropriate for all tribunal circumstances is doubtful, but it would, I submit, be a good starting point. One problem which the Ombudsman's investigation of a WCAT adjudicative decision presents and which has not received much attention is the fact that the investigation is of a complaint by a losing party, which puts the rights of a winning party in issue. In these cases, therefore, unlike the Ombudsman's traditional role of challenging a government decision and a government interest in support of a private citizen's point of view, in dealing with WCAT decisions the Ombudsman is in the position of challenging the rights of another private citizen on behalf of the complaining private citizen. I believe that changes the dynamics and the policy considerations quite significantly, or should do so. I do not think that peculiar problem involved in the Ombudsman's review of tribunal decisions, where the tribunal is deciding between the rights of competing

private citizens, has received sufficient attention in the work that has been done to date.

The rules governing the Ombudsman's involvement with reviewing the tribunal's adjudicative decisions need to address that problem: What are the rights of the other non-complaining party, who is not the government, to participate in the Ombudsman's investigation? I'm not sure. I don't have an answer, but it is a neglected area in this subject.

I've also noticed the 1993 report suggestion that SOAR might play a useful consulting role in a rule formulation process. I think that appears at page 86 of the 1993 report. I'm not in a position to speak for SOAR in any official capacity, but it does seem to me that it is a role that would be most appropriate for SOAR and one which that organization would be likely to look upon with favour.

At page 18 there is reference to the committee's "monitor and review" recommendation. I appreciate that I am probably intruding here on an issue of considerable inherent controversy as between the committee and the Ombudsman. However, I feel I should express the view that I have by reason of the perspective I bring to that question from my position as chair of another independent agency. It is my feeling that if it were proposed that WCAT's exercise of its functions be subject to being monitored and reviewed by either the Ministry of Labour or the WCB, both I and the tribunal's worker and employer constituencies would see that as being entirely incompatible with the tribunal's independence.

The analogy is not, of course, complete, as we are talking here about monitoring and review by a committee of the Legislature. On the other hand, while I understand the non-partisan tradition of this committee, it is none the less a committee whose decisions are subject ultimately to control by its government members, and the perception concerning the impact on the independence of the Ombudsman is not likely, in my respectful submission, to be significantly different.

The final matter I should like to comment on is the recommendation of the term of office of six years at page 23 of the Ombudsman's response. Both the committee and the Ombudsman appear to agree that a six-year term provides a sufficient safeguard of the Ombudsman's independence, extending as it does beyond the term of any sitting government. As you might appreciate, the question of terms of appointments for chairs of independent organizations is one close to my heart and I have a couple of observations about this particular proposal.

First of all, the protection that six years affords I think is illusory. Here I don't want to be taken as suggesting that there is any current problem in this regard, but from a structural point of view the protection of extending beyond a current government's tenure is illusory. You only have to consider an Ombudsman who has four years left on their term when a new government comes into power. That protection of independence can only exist for a couple of years probably, depending on how the appointment coincides with the change of government and so on. So for that Ombudsman who has four years left when the government changes, the kind of protection

that was talked about here just evaporates. In fact, with any fixed term, whether it be three years or five years or 10 years, the protection it provides for independence is, in my view, illusory, because the term erodes. As you get closer to the end of the term, the dependency becomes more and more apparent. In my view, the longer the term, the greater the dependency because the less opportunities that individual has for doing other things, going back to a previous career and so on.

In my view, there is a lot to be said in the Ombudsman's situation for the appointment of people at the end of their careers whose appointment will run through to their retirement. That is what occurred up until the present incumbent, and in my respectful submission that circumstance really creates a true independence in that office. Of course the down side is that you want people appointed who are vigorous and still — well, I guess "vigorous" is the right word — and people who would not see it as a retirement arrangement. Mid-career appointments are probably desirable from that point of view.

Where you have a mid-term appointment, you run the danger of having the incumbent being seen to be running for their next career appointment, and the perception of the possibility that decisions will be tailored by his or her perceptions of where those career opportunities might most likely lie. I think for mid-term appointments what is really required to ensure independence is a very substantial separation package at the end of the term. In other words, you need an individual who is comfortable about their financial security at the end of their term for a substantial period of time, which allows them to reorient their careers without feeling a high degree of dependency on the incumbent government for a further appointment and so on.

In this area I would make three points: (1) A fixed-term appointment, however long, does not provide anything but an illusion of independence; (2) the best arrangement is a vigorous person appointed at a time when the appointment will run through to their time of retirement; (3) the third choice would be a mid-term appointment but with a substantial — I would suggest for an appointment of this standing and importance a termination package in the order of two years of salary and benefits after the term expires.

Those were the only items in the various recommendations on which I thought I had anything of particular interest to contribute. Thank you for the opportunity. I'd be delighted to take any questions.

Mr Pat Hoy (Essex-Kent): Thank you very much for your presentation this morning. You obviously have given this a great deal of thought since 1993 up to today's date.

You opened by saying that the Ombudsman could appear to be intrusive on the policy matters of the tribunal. The Ombudsman has stated that the role would be to look only at the process of how that tribunal made the decision, not necessarily — of course by extension, I suppose, the decision itself, but the current Ombudsman has said that they look at the process only. You say that it's intrusive on the policy matters.

Mr Ellis: I was distinguishing between the intervention on policy matters as opposed to the individual adjudica-

tive — in other words, this distinction between her role with respect to adjudicative decisions of the tribunal and her role with respect to systemic policy issues. Again, I'm speaking here from a structural point of view of principle rather than reflecting any bad experience I've had with this Ombudsman. Our experience with her has been excellent and our working relationship has been first-class; we have no difficulty with that.

As I mentioned in my January 1993 report, when I deal with her, when she addresses me on a policy question, I rather feel like the president of a corporation dealing with the chief executive officer-chairman of the board. She brings to those discussions — she doesn't brandish it — this implicit power, if they disagree on a policy matter, of escalating that to the Premier's office, to this committee, and also the power to initiate a broadranging organizational review, which, as you know, is quite a daunting and disruptive undertaking for any tribunal to have to contemplate.

Mr Hoy: I'll try to be brief here. We hear on quite a few occasions, actually, the need to educate the public about the role of the Ombudsman. You waded in on that somewhat by saying that someone who is not successful at the appeal stage of your workers' compensation, and then to hand them a brochure to explain the role of the Ombudsman — we're in a bit of a catch-22, whereby we want to educate the public about the Ombudsman's role, generally speaking, not just limited to your tribunal, but then at the same time we may even be coaching them. You see this as somewhat of a problem.

Mr Ellis: Yes. I think how the education is delivered and by whom becomes important. When you talk about doing it at the contact point, and in our situation the tribunal having the Ombudsman's brochure, or perhaps most directly, enclosing it in the letter in which you send the final decision to the losing party — I think the employer is assuming that the worker has lost. In a case where the employer has participated and has won the appeal, for us to enclose a brochure from the Ombudsman in the letter to the losing worker would be seen as somewhat incompatible with our neutral role in the matter, would be seen I think by the employer as fomenting further litigation in a setting in which our decisions are said to be final, and the whole point of the appeals tribunal is to finish the litigation. I think it would be awkward and inappropriate for us to do that. Whether there's someone else who should be doing it at that juncture would be another question. 1040

Mr Len Wood (Cochrane North): Just a couple of brief questions. You're saying the term of office of somebody at retirement — and I know retirements are all over the place. At my former employment, early retirement was age 55, full retirement was age 58. Members of the Legislative Assembly can get a full pension at age 55 if they have the years of service. I'm just wondering at what age you think it would be ideal to be appointed and at what age they should be out of it.

Mr Ellis: I guess an appointment to an age in which the probability of their being interested in taking on another major assignment would be remote. I don't know. It would vary with the individual, I think, but probably age 65 would be a good rule of thumb.

Mr Len Wood: A number of changes are taking place, and I'm just wondering how much extra work will be involved with the Ombudsman's office with the example of Bill 99 coming forward with changes to compensation the way it is. Is that going to generate a lot more work for the Ombudsman? I know it will generate a lot more work for the MPPs, the constituency staff that are expected to do that.

Mr Ellis: It's obviously hard to project, but the provision in the bill which requires the tribunal to apply board policy and not, as I understand it, to have regard for whether or not the policy complies with the legislation is I think a source of additional business for the Ombudsman potentially. For a complaint about a policy that is seen to be incompatible with the requirements of the act, the Ombudsman will be a place where that can be examined. That's a new item of business for them, and how large a caseload that might generate is very hard to say.

Mr Len Wood: Thank you very much. That's the second time you've come forward with a presentation, and I'm sure the information you've brought to us is going to be useful as we deal with the Ombudsman in the future.

Mr John O'Toole (Durham East): Thank you very much. My question is, whether it's the term of office or the conditions of transition from and into office or the duties of the office, in pretty well everything that I heard you saying basically the bottom line was whether or not there should be a review or a second opinion, even in the operations of the office. In your experience with SOAR and other organizations, have you thought of any other model where a single-point decision-maker — obviously the WCAT process tends to deal with a decision at a committee level. Would that be an appropriate model — this would deal with the transition of the office, then — if you had a board?

Mr Ellis: You mean the Ombudsman reporting to a

Mr O'Toole: Let's say it's like WCAT. You're chair of that board but it's a board decision; it isn't your decision.

Mr Ellis: Yes, that's true.

Mr O'Toole: Then it brings in the whole question, and you probably can't answer this — when it's the final point of appeal, when I've seen the little diagram on the appeals process with WCB, that's the final one.

Mr Ellis: Yes.

Mr O'Toole: That's the problem. We don't have a perfect system. Should there be any review of your decisions?

Mr Ellis: Certainly my colleagues in the administrative justice system would generally feel that there is a problem in principle with the Ombudsman reviewing an adjudicative decision. In my January 1993 submission, on the first page you will see that I attempted to describe the feelings everyone has about the problem of the Ombudsman having a role at all. I had held that view, and I think this argument against involvement is quite strong from an administrative law point of view, from the point of view

of administering the administrative justice system. But because the courts took a different view, the Ombudsman's role is challenged, as you know, and the Ombudsman got the support of the Ontario Court of Appeal on that issue. So I for one put that behind us and moved on.

I then discovered, in working with the Ombudsman in accordance with her commitment to looking at the process, as you indicated, and not trying to substitute her judgement for the tribunal's judgement but looking at whether what we're doing is reasonable, once we entered into that relationship, then it became apparent to me from that experience that it has proven to be very useful. It is kind of an ongoing audit from an objective and outside point of view of our process and our performance. That audit, apart from the occasional problem it actually turns up which leads to changes in a decision, the fact that the audit goes on has a positive influence on the quality of the tribunal's work, in my view. Writing a decision, you cannot help having in the back of your mind the awareness that this may eventually be investigated by the Ombudsman and so on.

I think the argument in principle is uphill on the question of whether the Ombudsman should be doing it, but I have concluded that from a practical point of view and in practice, given the limitations the Ombudsman has accepted in her approach to these kinds of decisions, it has proven to be a positive and useful process and one I would be sorry to see disappear.

Mr O'Toole: It begs the question, if I may -

The Chair: No, you may not, Mr O'Toole. That rounds out our time. Thank you very much, Mr Ellis, for assisting in our process.

#### INJURED WORKERS' CONSULTANTS

The Chair: I will take this opportunity to advise members of the committee that we have a cancellation this morning and our next presentation will be from Orlando Buonastella. Come on up to the table, and as long as you identify yourselves, you're all welcome to participate. While you're getting ready, Mr Buonastella, I'll tell you that you have half an hour for your presentation. The floor is yours.

Mr Orlando Buonastella: Thank you very much.

Mr John McKinnon: Let me begin by introducing ourselves. I am John McKinnon. I work with Injured Workers' Consultants. Domenic Acierno is an injured worker who has had the experience of going through every conceivable phase of the workers' compensation process and he's well known for his work with other injured workers. Orlando Buonastella also works with us at Injured Workers' Consultants. Carol McGregor also works with us at Injured Workers' Consultants. Haroula Theofilaktidis is an injured worker from our community whom we've been representing in her experiences with the workers' compensation appeal system.

1050

I would begin, also, if I may, by asking the members of the committee to introduce themselves for the benefit of Carol McGregor, who is blind and isn't aware of who is in the room.

The Chair: We have all three parties represented here. We have Mr Jordan, Mrs Fisher, Mr Froese, Mr O'Toole

of the government party; we have Mr Wood of the third party; and we have Mr Hoy and Mr Patten of the opposition party.

Mr McKinnon: Thank you.

For those of you who don't know our office, Injured Workers' Consultants is a community legal aid clinic. It was established by injured workers in 1969 to provide free legal advice and representation to injured workers who were having trouble with the Workers' Compensation Board. In addition to helping injured workers with their individual claims, we also take note of systemic problems experienced by injured workers and we raise them with the responsible authorities.

Historically, the Ombudsman has played a significant role in assisting injured workers. I regret that I didn't hear the tribunal chair's comments immediately before us in their entirety, but we would like to thank you for providing us with the opportunity to comment on the recommendations specifically in your 1993 report on the review of the Ombudsman.

Our submission today is relatively specific. It's limited to some issues that are addressed in the sections in that report dealing with the Ombudsman's jurisdiction and the Ombudsman's complaint review process. Essentially, by way of introduction, we'll be urging the committee to make an additional recommendation, first of all, confirming some of the beliefs and concerns expressed by the committee in its 1993 report, but also we'll be asking this committee to study the administrative cost to the Office of the Ombudsman of the proposed changes to the workers' compensation appeals system in Bill 99.

At this point, I'd like to turn the presentation over to Orlando Buonastella.

Mr Buonastella: Thank you. We're often told by MPPs or their constituency assistants that requests by injured workers for help with their WCB claims are one of the biggest demands on their offices. Until 10 years ago, it was also one of the biggest demands upon the Office of the Ombudsman. Complaints from injured workers came second only to complaints by those locked up in the province's jails and detention centres. For example, according to the annual report for 1983-84, 754 complaints, or nearly 14%, were about the WCB. It's an unfortunate truth that the level of dissatisfaction among injured workers was comparable to the level among the people we put in jail.

Until 1985, injured workers had no right of appeal to an independent tribunal. The only appeal was to the appeal board, which was simply an extension of the WCB. It generally applied WCB policies, not necessarily the act, and confirmed many of the decisions that had already been made. The Ombudsman's experience demonstrated to the government that something needed to be done. They commissioned Paul Weiler to study the workers' compensation system and make recommendations for improvement. Professor Weiler noted the opportunity to go to the Ombudsman was not a substitute for justice within the system. He wrote:

"Nor is the Ombudsman an acceptable alternative...the Ombudsman is a generalist. He spreads his net over the entire system of public administration in Ontario. He could not possibly master the intricate compromises

which are embedded in the structure of workers' compensation. I do not mean to downgrade the role of the Ombudsman.... If too many cases accumulate around a particular program or tribunal, the Ombudsman can signal the government that something must be done about that trouble spot. But the Office of the Ombudsman should not be used as the solution to such a problem.... I have in mind...a new Workers' Compensation Appeals Tribunal. This body would be a specialist in workers' compensation...it would be independent of the Workers' Compensation Board."

The difference between the function of an independent appeals tribunal and the old appeal board was explained by the chair of the appeals tribunal, whom you've just heard from:

"The fact that it was members of the governing body who heard and determined appeals is of particular interest with respect to cases involving issues concerning the meaning of the act itself. In most cases there would exist an established WCB view of the meaning of the act. This view would be found in the board's written directives and guidelines.... The presence in the former appeals system of that unconscious, intrinsic presumption of validity with respect to the board's view of the act...had the practical consequence of allowing the WCB to pursue its own commonsense view of what the act meant, free, to a large extent, from effective challenge.... It carried with it, however, the seeds and the appearance of arbitrariness, the eventual rejection of which, at a political level, was largely responsible for the adoption of the external appeals system.... The creation of the appeals tribunal represented, in effect, a deliberate choice in favour of more law and less discretion."

The independent appeals tribunal took the burden off the Ombudsman. Legislative changes in 1985, with Bill 101, eliminated the old appeal tribunal and established a right to appeal to the Workers' Compensation Appeals Tribunal, WCAT. The tribunal is independent of the WCB. It has the jurisdiction to make any decision that the Workers' Compensation Board could make. It has tripartite decision-making panels and a full hearing process. This was highly successful in improving the quality of justice administered under the Workers' Compensation Act. As noted on page 44 of your 1993 report, in the few cases in which the Ombudsman did intervene after the creation of the appeals tribunal, this intervention was welcomed by the tribunal as an opportunity to review and change decisions with which injured workers were unsatisfied.

By the 1986-87 annual report, the number of complaints about the WCB had been cut by more than half to 352 complaints, or only about 6% of the complaints within the jurisdiction of the Ombudsman. The next year it fell to 92 complaints, or 2%, so injured workers were no longer perceiving themselves as people in jail, if you will. The huge drop in the level of complaints by injured workers represented a huge improvement in the quality of justice administered under the Workers' Compensation Act as a result of legislative changes.

The quality of justice at agencies within and beyond the Ombudsman's jurisdiction: The standing committee on the Ombudsman has always had to deal with the issue of whether or not to expand the jurisdiction of the Ombudsman. The 1993 report, at page 51, refers to the conclusion of the predecessor committee which decided that the Ombudsman's jurisdiction should not be expanded. The committee had noted that expansion of jurisdiction would require significant and costly numbers of additional staff and was also concerned that the increased number of complaints would impair the Ombudsman's ability to respond quickly enough to complaints. The 1993 report of the committee reaches the same conclusion. The report says:

"Before such an expansion should be further considered, we believe greater efforts must be made at the local level and through the organizations concerned to improve the manner in which complaints are addressed. We would strongly encourage these organizations to examine their existing methods for dealing with concerns from the public, and to consider carefully ways in which they could themselves provide Ombudsman-type services."

We encourage the committee to turn those stated beliefs into a formal recommendation, but we believe that you should take this one step further. Your recommendation should speak to the quality of justice at agencies within the Ombudsman's jurisdiction as well as those outside of it. In our view, the Ombudsman has a higher duty to be watchful of the quality of justice of agencies in its own backyard than it does with respect to those outside its jurisdiction.

Bill 99: A hurricane is heading towards the Ombudsman. If you can't afford to expand jurisdiction, consider what will happen if the number of complaints to the Ombudsman by injured workers were to double or triple next year. What would be the impact on the resources and staff of the Ombudsman? How would such a dramatic increase in the most complex and time-consuming types of problems affect the speed with which the Ombudsman can deal with any complaint? When such a dramatic change is about to take place, it would be unwise for this committee to ignore it. A change of that magnitude not only reflects a significant impairment in the quality of justice administered by an agency within the Ombudsman's jurisdiction; it threatens the viability of the office to continue to deal with complaints in the manner and relative speed that it has for the past decade. I add "relative speed" for obvious reasons. 1100

We expect the Ombudsman to see an increase of 100% to 200% in the number of complaints by injured workers within a year of passage of Bill 99. The reason for this is the proposed changes to the appeals system in Bill 99. They will leave injured workers in a worse predicament than they were before the 1985 legislative changes.

The bill, which has had first reading, proposes a complete rewriting of the Workers' Compensation Act. One of the areas hardest hit in the bill is the right of appeal. It removes the independence of the WCAT and introduces strict time limits for filing appeals, after which injured workers lose the right to appeal.

Mr McKinnon: The point we want you to consider is that a subservient appeals tribunal puts the load back on the Ombudsman.

The Workers' Compensation Appeals Tribunal is going to be an extension of the Workers' Compensation Board. Under subsection 119(5) of the proposed new act, the Workers' Compensation Board will certify the policies that it believes apply to making the decision in an appeal from its decision. Then, pursuant to section 118, "Where a board policy applies with respect to an appeal, the appeals tribunal shall apply the policy when making its decision." That's the end of the story for many injured workers.

In many of the appeals that our office takes to the Workers' Compensation Appeals Tribunal, the issue is whether or not a board policy applies to limit compensation for an injured worker. A major issue for the appeals tribunal has always been deciding whether or not a particular board policy misinterprets the legislation, conflicts with the legislation or unduly restricts the legislation to the facts of a particular case. More often than not, the issue is not some exotic new disability. I can't believe personally the amount of words and the amount of print that has been expended on issues like compensation for chronic occupational stress. Approximately 13 to 14 injured workers in Ontario in the history of workers' compensation have received compensation for chronic occupational stress. It's a complete non-issue. More often than not, we're talking about real life for working people.

Let me give you just an example of this sort of issue. WCB policy on lost-time compensation for hernias says that a hernia is compensable if it results from a single strain or a single lift, so if you got a hernia as a result of a series of heavy lifts, you were denied. The appeals tribunal looked at the legislation, which says if it results from work it's compensable. So the tribunal decided that it is not reasonable to deny a claim which fails to meet the board's policy but does meet the statutory requirements of the act. That's what we're talking about in many of these cases when there's a dispute over the application of a board policy.

All of this is going to be thrown out the window when the board is put in charge of the appeals tribunal through its policymaking process. In effect, the Workers' Compensation Appeals Tribunal is going to be deprived of the jurisdiction to interpret and apply the law. The tribunal is simply bound to apply the policies of the Workers' Compensation Board, even when those policies may appear to the tribunal to be inconsistent with the legislation itself. The net effect of this will be to transfer much of the load which has been carried by the Workers' Compensation Appeals Tribunal for the past 10 years directly on to the Office of the Ombudsman.

I'm going to talk about the extent of that transfer, but I also wanted to mention the provisions in Bill 99 for time limits for appeals, because that also is going to expand the role for the Ombudsman. Currently, as you know, there are no time limits for appealing a decision by the Workers' Compensation Board. By way of example, a recent decision by the tribunal in a case handled by our office allowed entitlement to compensation for silicosis resulting from working in underground mining. The injured worker had been removed from the mines in 1954 and his mining certificate was revoked because he had

excessive shadowing on his lungs. However, the WCB had turned down the claim. The injured worker had tried to fight it on his own for a few years and he gave up. He couldn't do heavy work. He lived in poverty with his family. They suffered, they moved around the province; he never had a regular job. But many years later a doctor encouraged him to appeal that decision, and he did and the claim was allowed.

Delays of that long might be unusual, but delays of two to three years in pursuing an appeal are quite common for injured workers. There are a number of good reasons for this: difficulty with language or literacy, problems getting advice and representation, complications due to being involved in other disputes and other issues with the Workers' Compensation Board, unemployment, poverty and family problems. Often these things result in injured workers putting appeals on the back burner. It was a feature of the historic compromise that established our workers' compensation system that whatever compensation injured workers are entitled to, they are entitled to it, no matter when they pursue an appeal.

If Bill 99 is passed, injured workers will have 30 days to file an appeal in writing regarding return-to-work plans. For all other issues, they'll have six months. Many injured workers are then going to be pressured into appealing everything in sight so they don't get cut off by the time limits. This is going to increase the volume of appeals and, consequently, the number of denials which end up in the Ombudsman's office. As well, we believe many injured workers are just going to miss these deadlines. They too will have no option but to go to the Ombudsman.

There are early warning signs we have seen in our caseload that are evidence of the fact that this has already begun to happen. In our caseload we've seen many recent examples of restrictive policies being developed and implemented by the Workers' Compensation Board in an effort to stay one step ahead of the government's current workers' compensation reform process. For example, in January 1996, Minister Jackson released his first report on proposed changes to the workers' compensation system. In that report, he indicated that the government was considering legislative changes that would allow appeals to be decided without an oral hearing. In effect, the WCB has already responded by saying, "Yes, Premier, we hear you." The board has been involved in a more massive policy revision in the past year and a half than we saw in the five years following a complete change of the legislation in 1989.

By way of example, with the oral appeal hearings, although the Minister of Labour had dropped the proposal to eliminate oral appeal hearings by the time she drafted Bill 99, unfortunately it's already too late for injured workers. The WCB has already drastically reduced oral hearings through policy development in anticipation of legislation that they thought was going to do the same. Injured workers who are now stuck in the appeals process are getting a letter stating that if they would like an oral hearing, they can remain stuck in that backlog, but if they'd like a decision within 90 days, they can have a paper review.

This is a modern-day example of Hobson's choice. There's simply no choice for injured workers who have been living in poverty and waiting for a long time to have their appeal heard. Of course they're going to take the paper review. It's ironic, because less than two years ago the WCB decided to eliminate the paper review level of hearings so that injured workers could go directly to an oral hearing. Now we've done a complete flip-flop and we're going the other way.

Another example of restrictive new policies is one that you may be seeing in your constituency offices dealing with the clothing allowance. As you know, injured workers who are required as a result of their permanent disability to wear a rigid brace or an artificial limb are entitled to a specific amount each year as compensation for the damage caused to their clothing. The new WCB policy reduces the amount that's payable to those injured workers. In addition to that, injured workers are being told by WCB staff that they should not be wearing their brace as much as they do. Now, when an injured worker receives a letter from the WCB saying the WCB is going to pay for a brace, the same letter also tells injured worker to try not to wear it.

We asked at the Office of the Ombudsman, is there any evidence of recent problems showing up in the workload of the Ombudsman's office? We were advised that the most recent statistics show that complaints in workers' compensation matters have shot up to 901 complaints, or nearly 11% of all complaints within the jurisdiction of the Ombudsman. We believe this is only a shadow of what the future has in store for the Ombudsman if the workers' compensation system loses its independent appeals tribunal and introduces arbitrary time limits for appeals.

You have to ask yourself in this committee, what price will the Ombudsman pay as a result of these changes to the appeal system? Reduced appeal rights will significantly reduce the quality of justice under the workers' compensation system. It will also significantly and directly impact on the viability of the Office of the Ombudsman to deal with the volume of complaints within its jurisdiction. In our submission, it would be unwise for this committee to ignore the fact that such a significant change is about to take place.

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We expect that the proportion of complaints to the Ombudsman by injured workers will soon far exceed the 14% figure from 1984 if injured workers not only lose the right of appeal to an independent tribunal but also lose the right of appeal altogether through the imposition of time limits on their appeals. Such a sudden and significant increase in the number of complaints to the Ombudsman is going to have a far greater impact on the viability of the Ombudsman's office than any expansion of jurisdiction that's been considered.

We hope the committee would agree that the right to an independent tribunal is a significant factor in the quality of justice administered by any agency within its control and we ask the committee to put that concern on the record. We also ask the committee to request the Ministry of Labour and the Ombudsman, who know far better than we, to provide a cost estimate of the impact of the proposed workers' compensation changes on the Office of the Ombudsman.

The 1993 report of the committee remarks on the historical efforts of this committee to function in a nonpartisan manner. Just as the committee has stated that agencies beyond its jurisdiction should strive to improve their quality of justice, the committee should also comment on changes to agencies within its jurisdiction.

You'll see the chart on the last page of our submission charting the volume of workers' compensation complaints since 1983. You can see that the number of complaints dwindles down to virtually nothing by 1987-88, and then, using the figures that we were given by the Ombudsman for 1995-96, jumps up to more than 700 complaints. Our projection for 1997-98 and 1998-99 is based on the fact that when the independent tribunal was created, the volume of complaints to the Ombudsman was reduced to less than one third. So we expect it can be conservatively estimated that the elimination of the tribunal's independence and the introduction of time limits for appeals is going to more than triple the present volume of complaints at the Office of the Ombudsman.

We ask the committee to think about how the proposed reduction in appeal rights will affect the quality of justice for injured workers and the ability of the Ombudsman's office to continue to deal with the other matters within its jurisdiction. We hope you will agree there are grounds for concern here, and we ask that you not ignore these concerns. We thank you very much for the opportunity to raise them with the committee.

Mr Len Wood: Thank you very much for coming forward and showing your concern and, it seems, your anxiety and worry about what you think is going to happen with the Ombudsman's office when Bill 99 is rammed through the Legislature if they don't take into consideration not only the amount of extra burden and work they are going to put on to the MPPs' offices and their staff but the work they're going to put on to the Ombudsman's office, for what reason other than just an attack on the injured workers in this province?

I note you are saying that injured workers, as a percentage, at one point in time before 1984 were considered similar to prisoners. That's not the way I look at injured workers from a personal point of view. They were productive workers and they injured themselves and they should be paid compensation until such time as they're fully rehabilitated and put back into the workforce.

If your concerns are what you're saying here, and I have no reason to doubt it, saying that Bill 99 is a disaster for the workers in this province, why would any government want to bring in a bill that is going to make the workers worse off now than they were from 1985 to 1997? Why would they want to attack the workers in this nature?

Mr Buonastella: Bill 99 hasn't been passed yet. What we hope to do is raise a specific concern with respect to appeals. Of course, Bill 99 deals with benefit levels, entitlements and a whole range of issues that we're quite concerned about.

From the point of view of your committee, the concern you must naturally have is that injured workers feel they don't deal with a kangaroo court. Injured workers work hard before their injury. They are honest citizens. They must have a sense that an injury will not lead to poverty and deprivation and, most of all, that somebody will hear them, somebody with compassion will treat them like human beings. This is a very important perception that the injured worker community must have.

The lack of this perception when injured workers were coming and were feeling like prisoners prior to the WCAT is what brought about an independent tribunal, because Professor Weiler and the Conservative government and the opposition of the day understood that this perception is important for the functioning of this province. So they said: "What we're going to do is make sure that when you, injured worker, go in front of a tribunal to hear your case, you will not think it's the same people who turned you down in the first place. There's going to be a separation. You will feel confident."

That has brought about a certain level of acceptance of these decisions. You go home after your decision, and whether it's in favour or against, at least you have a feeling that you were given a fair hearing and that you have some respect for that decision. Therefore, less recourse to the Ombudsman. I think if this is turned back, we're going back to the very same time, the very same bad situation that gave rise to the changes in 1985, and I think we should stay away from it.

Mr O'Toole: Thank you very much for your presentation. You're right: There will be public hearings on Bill 99. I suspect some of these points will be discussed then.

I had asked Mr Ellis from the WCAT for his views on the right to appeal, and I guess the Ontario courts made that decision some years ago, allowing people to appeal from WCAT to the Ombudsman. My question to you is, if the Workers' Compensation Appeals Tribunal remains in place, autonomous and independent, do you think that once those decisions are made, the person would have another level of appeal, or should have? Let's say it's proven to be independent and thoroughly qualified to rule and make independent decisions. Do you still think there should be another level of appeal beyond that, like the Ombudsman's office?

Mr McKinnon: The number of occasions to even consider that question has been almost nil in the past 10 years in our office. Maybe 10 or a dozen times has there been any consideration of whether there should be some further appeal after the decision of the appeals tribunal, whether it's by way of judicial review or going to the Ombudsman. So it's not a point that would make much of a strain on the Ombudsman.

I can tell you just by way of an example, in a case that we were involved in — it involved the interpretation of the injured worker's medical condition — the case went to the appeals tribunal and entitlement was denied. It had to do with the weighing of the evidence and the various medical reports of the injured worker on file. We agreed and felt that the decision didn't fairly interpret the evidence. We asked the appeals tribunal to reconsider and they said no. We went through the reconsideration process and that was the end.

At that point we went to the Office of the Ombudsman and they spent a considerable amount of time looking into it, analysing it and getting some, I think, medical

interpretation of the medical reports, and they decided there was something to what we were saying. The Ombudsman referred the matter to the appeals tribunal and the appeals tribunal accepted the recommendation of the Ombudsman, reopened the case, reheard the case, looked at the evidence again, more carefully, and allowed the claim. So it has worked out to the advantage of injured workers to have an opportunity to go there, but it's certainly not something that exists in our mind as if it were a further level of appeal.

There is an extremely high sense of finality to the decisions by the appeals tribunal. Whether it's a request coming from us to reconsider it or from the Ombudsman to look at it again, I understand it's not all that common

that the decisions are reopened.

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Mr O'Toole: It's just that the appeals process, in my view, always has an end point. The process itself I agree should be totally autonomous and not subjected to any kind of influences. But with respect to time limits in that bill, isn't that to bring the case to point so the evidence and relevance of it is current, and don't you think that's the way it should be ideally?

Mr McKinnon: In our experience, it's simply not feasible for injured workers to file an appeal in writing within, say, 30 days of an adverse decision. So it simply

can't be done.

**Mr Patten:** I really appreciate this presentation. By the way, this will be very useful when we have the debate on Bill 99 because I think you've pointed out a couple of things with some examples that will be useful. I take it your thesis, and why you're here, is that it will have an impact on the Ombudsman's position in that the Ombudsman can respond to legislation that may not be working because it was flawed in the first instance.

I think what you're doing is alerting this committee to say: "Listen, this is a backwards step. This is a flawed process." You cannot put a time limit on medical problems related to work when they take years to show up as

serious symptoms, as one example.

In terms of your question to ask for — and maybe they've been done. I don't know if they've been done, but the Ministry of Labour and the Ombudsman's office should look at the economic impact. I would add that the auditor perhaps should do that as well. But I'd be happy to put that question before the committee on your behalf. I appreciate your coming here today.

The Chair: Thank you very much for assisting with our process this morning. Mr Acierno, may I say it's a

pleasure to see you again, sir.

Mr Domenic Acierno: Excuse me. Maybe you don't like the people on the Workers' Compensation Board. Justice

The Chair: You want justice.

Mr Acierno: Justice. [Remarks in Italian]

The Chair: Thank you, Mr Acierno.

Mr Acierno: Workers' Compensation Board no good. The Chair: Mr Acierno, I have to ask that if you want to pursue the conversation, you find another forum. Our time for your presentation

Mr Acierno: [Remarks in Italian] The Chair: Thank you, Mr Acierno.

#### DAVID WARNER

The Chair: Our next presenter is Mr David Warner. Welcome home, Mr Speaker.

Mr David Warner: Thank you. You've very kind.

The Chair: I feel somewhat akin to a flight attendant going through the takeoff safety protocols in an airplane full of seasoned travellers when I say, Mr Warner, you have half an hour before this committee. You may use that time as you wish. Any time not used for your presentation will be available for the members to ask questions, beginning with the government party in this case.

Mr Warner: I don't know how enjoyable a flight this will be, but I appreciate the introduction from the captain.

Honourable Chair and honourable members of the committee, first of all, it's a great privilege to have the opportunity to appear before you. I have prepared a presentation which I hope has been duplicated and sent around. May I preface the remarks by saying that I had the honour and privilege in the role of Speaker to work with the officers of the assembly. At the time, there were seven, including the Ombudsman. It was in that close working relationship that I had an opportunity to gain an appreciation of the importance of the various offices, including that of the Ombudsman. It's in that context that I am before you this morning.

In 1975, Ontario accepted a concept which was flourishing in many jurisdictions around the world, namely, an independent arbiter for citizen complaints against their government. Ordinary citizens can, without the expense of a court process, lodge complaints and have those complaints investigated by someone who is independent of government, whose impartiality, honesty and integrity

are above question.

Ontario has been very well served by each of its ombudspersons over the past 21 years. The quality and calibre of the individual has sustained public confidence in the complaint procedure. It seems to me that what is fundamental to the success of the Office of the Ombudsman is public trust that the office will function independently.

Being fair, impartial and objective brings its own set of problems, some of which I can relate to. Every time the Ombudsman makes a finding, someone is likely going to be unhappy. But such is the nature of making rulings, and someone has to have the last word. From my days as a member of the opposition, I know that I felt that I was right in the decisions I made, the opinions I formed. I have no doubt that had I been a member of the government, I would have felt a certain sense of infallibility. The government is always right, isn't it?

The truth is that loyal, hardworking, honest public servants will sometimes make mistakes. The truth is that honest, hardworking, sincere ministers of the crown will sometimes make an error in judgement. Admitting imperfection is probably a healthy way to help build the necessary avenue of redress for the wronged citizen.

I think that the experience here, as in other provinces, states and countries, has been an extremely successful one. Nothing is perfect and there will always be some who, for a variety of reasons, will not be fully satisfied

with the decisions made by Ombudspeople around the world, but all the more reason to stay a steady course.

Second-guessing the decisions of an independent officer of the assembly, even by well-intentioned and well-informed MPPs, is not in the best interests of maintaining public confidence in an extremely important institution. Most of the recommendations are laudable and will likely enhance the general operating of the Office of the Ombudsman. There are a couple of recommendations which I find quite alarming and a source of great cause for concern.

Recommendation 16: "That the standing orders of the Legislative Assembly be amended to provide that the committee shall monitor and review the Ombudsman's exercise of his or her functions and report any changes to the Ombudsman Act that the committee considers desirable." This recommendation undermines the authority of the Ombudsman and destroys the independence of the office, an independence which is crucial to the functioning of the office. I urge the committee to reject this recommendation.

Recommendation 18: "That the proposed terms of reference of the standing committee on the Ombudsman, as set out in recommendation 44 of this report, be included in the Ombudsman Act." This recommendation is obviously connected to recommendation 44 and, as such, impinges on the independence of the Office of the Ombudsman. I urge the committee to reject this recommendation.

Recommendation 44C: "To monitor and review the Ombudsman's exercise of his or her functions, and in particular: to inquire into and report on any matter which the committee believes should be brought to the attention of the assembly; and to recommend any change the committee considers desirable to the Ombudsman Act."

This is the most serious of intrusions into the daily operation of the Office of the Ombudsman. If this recommendation is adopted, there will be, at the very least, an appearance of political interference with an office which is supposed to be impartial. At worst, the credibility of the office would be destroyed. Why complain about mistakes or mistreatment by government officials if your case can be second-guessed by a committee of MPPs, a committee which is dominated by government members? 1130

I cannot state strongly enough how dangerous this recommendation is. The hallmarks of the Office of the Ombudsman, from its inception in 1975, have been integrity and honesty, qualities which have never been tainted by political interference or influence. The office has served the people of Ontario with distinction and has earned the confidence of the public. This recommendation runs the serious risk of destroying that confidence and ultimately the practical functioning of the office.

Accountability: No office could be more accountable than that of the Ombudsman. Subject to scrutiny by the public auditor, the Board of Internal Economy, the laws of freedom of information and privacy, and ultimately the Legislature itself, the office has always had to be above reproach, and it has.

Committee system: I add this as something, I realize, that is not absolutely germane to the report you're doing,

but in a wider context it is something that perhaps this committee would consider.

During my term as Speaker, I felt very strongly that significant reform was needed to our committee system. It seemed to me that generally speaking committees were not given the appropriate independent status or power needed to be effective. Significant changes in the operation of committees took place in Ottawa and Westminster a number of years ago, and in both situations the functioning of committees was strengthened.

There are many dimensions to reform of the committee system. I briefly mention one, which I firmly believe is appropriate for the committee on the Ombudsman. In keeping with the independent and impartial nature of the office, I recommend that the committee on the Ombudsman comprise two members from each of the three political parties in the House and that those six members elect a seventh from the House to be their Chair. The general theme of the committee should be to develop a consensus on all issues, but where a vote is necessary, there must be at least one person from each party who votes in favour of the item under discussion. In other words, every conceivable effort must be made to make the committee as fair and impartial as the office with which it wishes to work so closely.

Summary: There are some very useful, fine-tuning types of recommendations in the report. However, there are a few recommendations which, if implemented, have the potential of seriously undermining an office which has served the people of Ontario exceedingly well for more than two decades. Please do not allow good intentions to be the catalyst for the demise of the Office of Ombudsman.

I tried to make my comments brief and succinct. Naturally, I would welcome any questions or comments.

Mr O'Toole: Thank you, Mr Speaker Warner, if that's the appropriate title. I don't have the experience, certainly, that you bring to this building. You started off your presentation by saying something like, "Someone has to have the last word." We use that term "Ombudsman." We heard earlier "WCAT," some objective body. I know that I had occasions to refer issues to the Ombudsperson, and those people were still unhappy.

That being said, you made another comment. You said we shouldn't be second-guessing the office. It reflects public confidence and the more we drag it through all of the earthly qualities that the MPPs have, wrangling, the more we demean the office itself. I suspect that's what you're implying.

My question to you then is, have you ever thought of another format for the role of the Ombudsman? WCAT is like a board. Do you think we should rest all our trust in one person, whether they're politically or otherwise corrupted? I would hate to think that would ever happen. You tried to flush that down to this committee being six members with an elected Chair, each party having to vote one for and one against, and ultimately the decision would be made by the Chair, which means the Chair replaces the Ombudsman, which means, why have we got an Ombudsman? Who do we appeal the Ombudsman's decisions to? Really, it's the question. How about a multiparty Ombudsman? Has that ever been tried?

Mr Warner: I appreciate your question. Part of it rests in a saying some of you may be familiar with — they certainly are in Mr Jordan's part of the world — if it ain't broke, don't try and fix it. The office has served this province very well, as indeed it has served various jurisdictions around the world very well.

Under certain circumstances the complainant still has the opportunity to go to court if he or she wishes to do so. I can't overstate it that whether you are the Speaker of the House, a referee or the Ombudsman, the moment you make a decision someone will be unhappy. It's not reasonable to expect that the Ombudsman is going to find in favour of every single complainant who comes before her or him.

Some people are going to make complaints, they will be investigated and at the end of the day they will still be unhappy that the Ombudsman has found not in their favour. That's the nature of life. As unhappy as it may be, that's the way it is. To then try and find another avenue around that only begs the question and ultimately, whatever avenue you find, there's a good likelihood that individual is still going to be unhappy. If you allow appeals here people will come here, and guess what? I bet some of those people will go away unhappy. Then where do they go? Do they go to court and do they take you with them?

I really come back to the central part, that basically the office works well, enjoys the confidence of the vast majority of the people of this province and has ever since 1975. I don't think it's a wise idea to be trying to change the basic structure. If you want to look at some of the intricacies of it, some of the nuances, that's fine, and your report does that. I think the Ombudsman herself has commented that there are lot of parts in that report that would be gratefully received and be most helpful in the running of the office, but the basic structure I maintain should be left intact.

Mr Hoy: Good morning, sir. I appreciate your comments. In regard to recommendations 16, 18 and 44(c), most clearly you've asked that these just be rejected. It is also the view of the Ombudsman; in these three instances the present Ombudsperson concurs with you. The independence of the office is one that maybe the government is having some problems with. I believe they are looking for some accountability, but grappling along with that the independence this office requires to do its job well. It's also interesting that the report of 1993 has sat dormant until now and it will be nearly four years since its first printing, delivered to you in the House, I see here.

Mr Tom Froese (St Catharines-Brock): On a point of order, Mr Chairman: Reference was made that the government has a problem with the Ombudsman's office. This report was done by this committee. We all agreed on the recommendations here. Obviously, I'm going to take exception to that reference because this was a report that was done in 1993 by an all-party, non-partisan committee. It came up with the recommendations. It was discussed again with this committee and we made changes to the recommendations and we've come forward with recommendations. This is an all-party, non-partisan committee report, and making references to the govern-

ment having a problem with the Ombudsman office, I don't understand where that comment's coming from.

The Chair: That's not a point of order. That may be a point for debate down the road but, Mr Hoy, you've just had a shot across your bow. Continue.

Mr Hoy: Yes, I heard it.

Grappling with the independence of the Ombudsman and some form of accountability, how do you grapple with that?

1140

Mr Warner: A number of things: First of all, in a democratic society, you always make an effort to have certain institutions which will be above reproach and be above political whims, above political influence. In our society that includes the courts, and successive governments for 200 years have always respected the independence of the courts. It's essential in a democratic society. The Ombudsman is placed in a similar category.

As far as a principle is concerned, I would liken it to the principle that I hold very strongly, that Parliament is more important than any government. Governments come and go; Parliament stays. Parliament reflects the will of all the people. Governments are elected by the people from time to time to make decisions in the direction in which the public wishes to go. Parliament, on the other hand, makes decisions that last far beyond the life of a government. The Ombudsman's office should have, and does have, a similar kind of principle. Its functioning in the society is one that people can genuinely feel safe in approaching, that the decisions that will be made by the Ombudsman's office will be made without favour, will be made without political consideration.

I don't need to tell any of you that in political life appearance is often as important as substance, that the appearance of interference is sufficient to muddy the water, is sufficient to weaken the confidence the general public would have in an office. It's as if at the same time you decided that the justice committee here should have some ability to take a look at decisions that have been made by the Court of Appeal. It takes little imagination to figure out what would happen in terms of a response from the general public.

Governments quite naturally, and I understand this — I was never part of a government but it seems to me it's very natural to expect that a government becomes a bit nervous about someone, an individual who has independence and will make independent decisions, that somehow those decisions will reflect badly on the government of the day.

I think those concerns are overblown, I think they're overstated because I think it's very reasonable to expect that people are human and they make mistakes. No matter how talented or how dedicated or how honest either public servants or ministers of the crown are, mistakes will be made, and every government, as long as we've had a democratic Parliament, has made mistakes. People understand that. That's why you have a body to turn to. That's why you have a complaint procedure, always with some appeal, as there is in the case of the Office of the Ombudsman.

Finally, your question about accountability: I can't imagine any public body that has more accountability

built into the system than the Office of the Ombudsman. The public auditor does an audit and can do the value-for-money audit as well as the forensic audit. They have that ability, that privilege. The office is subject to all the laws of privacy and freedom of information and has to respond to a request from the privacy commissioner.

Ultimately, of course, the Office of the Ombudsman is created by the Legislature and is answerable to the Legislature. So in terms of accountability, all the checks and balances are already there and there's no need to reinvent anything. If ministers of the crown are a bit nervous about having an independent body, I think that's a common nervousness that is shared by successive governments. I don't think it will ever go away, but I don't think it's a bad thing either. Instead, one should feel comforted with the fact that we have an Office of the Ombudsman that enjoys such a high level of appreciation and confidence as is shown in this province.

Mr Patten: It's good to have you come before the committee with your experience and your thoughtfulness. I appreciate that. By the way, I agree with your contention that in providing the best kind of consideration for whichever government, the tendency is you get defensive and you begin to look for ways of closing down criticism. It's a natural reaction. It happens and that's why I think your point is well taken, that it's important to remember you're only here for a while. No matter how long you may be there, it's a while and it's the institution of the Legislature and the Parliament that's the most important thing.

I want to ask you if there are any other precedents. You've made some comparisons obliquely to other jurisdictions. Are there any that in your opinion have the kind of apparent intrusiveness of a parliamentary committee in terms of an Ombudsman's office?

Mr Warner: I'm not aware of any, but then again I would never suggest that I'm an authority on the subject. It may be worthwhile for the committee to take a look at that question and perhaps with a very able clerk and the legislative library a bit of research could be done to determine that. Personally, I'm not aware of any but there are a lot of jurisdictions in the world when you take into account that there are states and provinces, as well as countries, which have an Ombudsman, many of whom have had the Ombudsman's office for a much longer time than we have enjoyed in Ontario.

As you may know, on a regular basis, the ombudsmen from around the world meet and share information and it's through that process that they come forward with suggestions on their own as to how to improve the delivery, how to improve the accountability and so on.

On my last comment about the accountability, if you turn it around, I can't imagine that any public figure would want as high-profile a job as the Ombudsman has without some built-in accountability. That's security for the individual. You don't want to leave yourself open to public attack or to libel or lawsuits or to anything else. You want accountability if you are in a position of authority, such as the Ombudsman is, or a member of the court or anybody else.

Mr Len Wood: Thank you very much, David, for coming forward. Good to see you again. On the second

page you're saying that second-guessing the decisions of an independent officer of the assembly, even well-intentioned or well-informed MPPs, is not in the best interest of maintaining the public interest, the public confidence. This is a report that, as you're aware, has been sitting here since 1993. A new government was formed in 1995. We got the committee back together and made some changes and recommendations in 1996, and we're here now in 1997.

If there were to be changes made to the responsibilities of the Ombudsman, how should that approach be taken? I know you're saying that the committee probably should be changed because the government is always right and the opposition is always wrong. If you're the third party, you're considered to be third-time wrong. But how would you make changes? I know it's very difficult if you've got an Ombudsperson who's been in there for four or five years looking at the committee and saying: "What are they trying to do? Are they trying to muzzle me or what I can do?" How would you make changes? What would be the best time to do it?

Mr Warner: They are fair questions, Mr Wood, which I appreciate. There are a couple of things. Number one, my comments to the committee stem from a very deep and abiding concern that regardless of who wins the election, what the public often sees is their elected officials fighting among themselves instead of doing their utmost to collectively find answers to serious problems.

It was my experience as Speaker to see committees that I often didn't think were as effective as they could have been and should have been because of partisan divides that in a lot of cases were overblown. I always feel that we should be concentrating on the things we have in common more than the things which divide us. I think it's especially true of the Ombudsman's committee because of the very nature of the Office of the Ombudsman.

Second, to answer your question about changes, as I mentioned, the recommendations in the report, with the exception of the ones I have highlighted, are for the most part very positive and helpful.

In terms of the future, it would be extremely useful to sit down in private meeting with the Ombudsman to talk about the functioning of the office and to share suggestions and ideas as to what the future should be. I have no doubt that as she approaches the end of her term she will put together some ideas on the future of the office — I think other ombudsmen have done that — to see what the direction should be from there. Every office is looking towards the future as to how they can best meet the needs of the people in the province. That's the standard way to function.

For starters, if this committee could meet with the Ombudsman on a fairly regular basis, I think it would be helpful. I know that during my term one of the things I was very interested in doing was making sure that all the members of the assembly got to meet all of the officers. We had a couple of information sessions here at the House, where the officers came and presented, explained

to the members what their office was all about and invited suggestions and opened up a dialogue. I always felt that was really useful. I think more of that would be most helpful in perhaps closing the gap between the members and the office.

Mr Len Wood: We had a presentation, and you weren't here at the beginning. On appointment of a new Ombudsman, it was suggested that we should be looking at somebody who's 65 years old, retired and appoint them for a short period of time and give them a two-year severance after that, whether it be three years, four years or five years; that we shouldn't be picking somebody in the middle of their career. I asked the question, "What do you consider a retirement age?" In the paper mill, it's 55 or 58. He suggested age 65. I'm just wondering if you had any ideas on that.

Mr Warner: If you ask me today what I think, I think retirement age should be the age I'm at now. Although some people decided I should retire from one occupation.

It's a difficult question, but I approach it from this point of view: If you believe the office is important, if you believe the office should always be independent and above reproach, then don't you want the very best person possible to fill that position? You have to decide what is an appropriate length of term. In many instances, parliaments see that it is a good idea to have a term that is slightly longer than the normal life of a government to try to take away any suggestion that there's some kind of partisan selection afoot here. That's why sometimes the terms are either five years or 10, with an idea to put it beyond the life of one Parliament.

I personally prefer that kind of approach, but I underscore that I think the most important thing is to get the right person for the job. Maybe that person is 65; maybe that person is 35. The largest, most powerful university in the country has as its president the youngest person ever appointed as president of a university in this country. I don't think anyone — well, probably students who are having to pay more tuition would argue, but no one else would believe that Mr Prichard was doing anything other than a superb job. I think he was about age 40 when he was appointed.

Mr Len Wood: Age shouldn't be a factor.

Mr Warner: No.

The Chair: Mr Warner, thank you very much for assisting in our process this morning.

Mr Warner: Thank you, and I wish the committee well in its deliberations. I hope I have an opportunity to meet you on other occasions, perhaps social if not more formal, as this.

In my parting comment, I would truly and sincerely invite the members to take a very close look at committee structure and perhaps chat with their colleagues in all parties and see if we can end up with a committee structure which would better serve the needs of the assembly and of the people of this beautiful province.

The Chair: Thank you very much. This committee will not be meeting next week. We stand adjourned until Wednesday, February 26.

The committee adjourned at 1156.

#### **CONTENTS**

#### Wednesday 12 February 1997

Review of the Office of the Ombudsman	B-101
Mr Ron Ellis	B-101
Injured Workers' Consultants	B-105
Mr Orlando Buonastella	
Mr John McKinnon	
Mr Domenic Acierno	
Mr David Warner	B-110

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\*Mr Bill Vankoughnet (Frontenac-Addington PC)

\*Mr Len Wood (Cochrane North / -Nord ND)

\*In attendance / présents

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service





B-11

B-11

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First Session, 36th Parliament

# Assemblée législative de l'Ontario

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Mercredi 5 mars 1997

Standing committee on the Ombudsman

Review of the Office of the Ombudsman

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman



Chair: John L. Parker Clerk: Lisa Freedman Président : John L. Parker Greffière : Lisa Freedman

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 5 March 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 5 mars 1997

The committee met at 1005 in committee room 2.

## REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John Parker): I am pleased to call this meeting to order and to begin by welcoming Mr McLean to today's proceedings. I'm honoured to be here with you, sir.

We have completed a number of weeks of public hearings with respect to the 1993 report. You will recall that at the beginning of those hearings we heard from the Ombudsman. That discussion was curtailed as we entered into the process of hearing from some third parties. We have heard from all of the third parties who responded to our invitation and the Ombudsman is now back for us today to pick up where she left off when she was speaking with us earlier.

She has contacted me privately and suggested to me that she's open as to how we proceed from here. I'd invite her to repeat that invitation to this meeting and then I will ask this meeting how you wish to proceed from here on in.

Madam Ombudsman, welcome back. The floor is yours.

Ms Roberta Jamieson: Good morning, bonjour, sago. Nice to see all of you again. It feels like spring. I hope it's really coming.

We got last day, I think, through to recommendation 18 and it was your request at that time that I go one by one. I'm happy to continue that in what I would call an abbreviated format. Many of the recommendations I've already spoken to in substance and so I could go through them, reference where I've mentioned the issue earlier, add any issues that I think need to be highlighted and conclude the 44 recommendations. I would do that without repeating answers that were given before.

We can have questions as we go or at the end, as you wish. Alternatively, we can have more of a dialogue on the particular recommendations that members want to explore further. I'm in the committee's hands; either way is fine with me.

The Chair: The invitation has been put before us. Any discussion? I'm looking to the government caucus first.

Mr R. Gary Stewart (Peterborough): Mr Chairman, I think we're at 18. I suggest we continue on and go through them one at a time and have dialogue with the Ombudsman, and we go from there, just get on with the report.

The Chair: If it makes sense to cluster them together, would that be suitable to you?

Mr Stewart: No problem with me, Mr Chairman. I just think, let's go for it.

The Chair: Is the opposition caucus happy with that? Mr Hoy, thank you. I see Mr Wood nodding as well. There you have it, Madam Ombudsman. Carry on.

Ms Jamieson: Recommendation 19 deals with the standing committee's responsibility for amendments to the Ombudsman Act and 20 deals with the appointment of the Ombudsman.

You'll remember when I did the initial contribution, I separated these recommendations into a number of themes and I'll try and reference those themes as we go to keep some sort of order. This one was simply under sort of other issues.

As far as I can see, these issues are a matter for the House to determine. I've provided my own ideas, suggestions on the composition of a committee that would be important to consider these matters. I suggest merely that whatever is done to construct such a committee, it be done in such a way as to strengthen and preserve the independence of the office. I'm happy to talk about that further, but I have referenced that earlier.

Number 21 deals with the terms of an Ombudsman's appointment. This is a change to the act that's proposed and I think my only concern here would be that whatever number of years is settled upon makes the term beyond the terms of a particular government. That's important just to demonstrate that the holder of the office will be able to do his or her job without any appearance of an opportunity for political influence. Whether it's six years, seven years, eight years, as long as it's beyond the term of a government, I think that suits the purpose.

Number 22: I think this is entirely agreed and that this section should be removed. I don't think there is a need for the retirement clause that's in there now.

Numbers 23 and 24, I'd like to take together. Both of these recommendations deal with estimates and I've grouped them under the theme "estimates and directives" in my response. Number 23 proposes a new role for the standing committee in the process of estimates. The current process, as you know, is for the Ombudsman to present my estimates to the Legislature's Board of Internal Economy, which is chaired by the Speaker.

In addition, section 10 of the Ombudsman Act requires an annual audit by the Provincial Auditor, which I then publish each year in the annual report. I think these measures of accountability are entirely appropriate and that it's important, in thinking about estimates review, that it be clear that the Ombudsman is not a civil servant, is not part of government and has a financial accountability relationship that reinforces that.

The relationship I have now allows the public to have confidence that the work I do is conducted without interference or opportunity for interference politically,

and that the relationship I have with the board is very much like — it is in fact the same one that the officers of the Legislature have. Whether you're talking about the auditor, elections finance, the electoral officer, anyone of these officers, we all now have the same relationship with the board and I think that it is an appropriate one. I think it works in practice and in a practical sense.

In this matter, I have echoing in my ears the words of Donald Morand, the second Ombudsman in the province, who in giving evidence before the 1993 report was done by this committee, summed it up by saying whoever pays the piper calls the tune, and that's certainly in the mind of the public as they review how the Ombudsman office is funded.

Indeed, I'm asked everywhere how they can be sure, as members of the public, that I do my investigations without influence, without being directed by government as to what to find and how to find it. In fact, we did an opinion poll a few years ago and found that almost half the people surveyed were sceptical, and if there's one thing they were sceptical about, it's the Ombudsman's ability to remain independent should funding be or be seen to be provided by government. Any time you have a committee structure that lends itself to that perception is where it will occur. I think it is very important to ensure that the office be and be seen to be beyond the reach of potentially partisan interests so that the public will have that trust.

Having said that, I also know that it's my responsibility to be sensitive to the fiscal environment, to the issues that are facing the public sector as a whole and to the attempts that are being made by the Legislature to make sure that all institutions in the public sector are effective without wasting funds or requiring excessive resources, and I think that is my responsibility. In fact, in the last year I have operated an organization with it that received a 20% reduction in budget, which was a decision taken by the Board of Internal Economy.

Number 24 deals with the same matter and I won't repeat myself.

Number 25: This recommendation proposes a new role again for a standing committee to monitor and review the work of my office, and it allows an opportunity for a standing committee, if this is implemented, to inquire into any matters which the committee feels are important to inquire into at my office.

I have dealt with this a bit before in discussing my view of how a relationship that would make the Ombudsman responsible to a committee that would in fact become the board of directors would not be appropriate and would allow and opportunity for the public to once again become concerned about the degree to which government could, if it wished, exert control over my office.

The language of "monitor and review" I think may set up exactly that kind of relationship. I know the phrase can be interpreted in a number of ways, and I think Mr Hoy mentioned this at an earlier session. But when I go back to look at the 1993 report and see how this particular recommendation was discussed on pages 77 and 78, it is precisely where that discussion was going that troubles me. It is precisely because that discussion went

towards providing an opportunity for micro-managing that has caused me some concern.

I want to hasten to add that my views about this section are not about this Ombudsman or this committee. I am trying to look at these issues in terms of the longer term — the next Ombudsman, the next committee. What's the appropriate balance in the relationship? What is it that we want to be able to demonstrate to the public? And in looking at that, to ensure that the public continues to have confidence in the independence of the office. Anything that takes away from that, you will understand I'll be concerned about.

#### 1020

I think on that question, we have discussed the board of directors issue in other sessions. I have given the clerk a detailed response to each of the recommendations in turn and I won't repeat them over and over.

Recommendation 26 speaks to the Ombudsman's Ombudsplan, as the committee calls it. I have already covered this in the introductory remarks I made at the outset of this review and merely want to emphasize that I'm very pleased to share information with the committee and look forward to doing that.

Recommendations 27 an 28 both deal with the rule-making issue. I've divided, in my response, rule-making into two sections, one process issues and the other content. This one falls squarely in the process and relates to a role that the standing committee would have to exercise.

Having said that I've talked extensively about my views on rule-making generally, I just want to underline the fact that especially right now, with the magnitude of changes that are going on in the public sector and the speed, if anything, it's even more important that my office be able to respond, have the room to have flexibility in how I would go about examining new issues as they arise, changes in agencies, boards and commissions. The more one makes rules, the more restrictive, usually, the world becomes, and I really think that flexibility is something that is necessary even more in the future.

So I just underline my earlier comments on this issue. If rule-making is to be pursued by this committee, I think then we need to focus on a process that allows us to dialogue very early on when rules are being considered by committee and I'm happy to participate in that should that come to pass.

Number 28 really deals with the same matter.

Numbers 29 and 30 I'll take together, again dealing with rule-making, this time about content. This proposes in kind of a nutshell that the Ombudsman perform a role beyond presenting the case where a government has refused to adopt my recommendations; that after I've presented the case to committee, I continue to perform a role on that matter.

We've had over the last couple of months a chance to do two cases, and I think it's more clear to me than ever that once I've presented the case to committee, answered all the committee's questions on it and the committee has had an opportunity to hear from me, it is then in the hands of the committee and the committee calls the ministry.

Indeed, you have asked to hear from me again on those cases. I think it worked quite well in those two cases and, if anything, I'm very convinced that it is quite appropriate that once I've presented the case here, my job is over. It's hard to see what I would do to follow up on things like Ms C, the issue of the inmates on remand, once I've brought that case forward. I think the process ends with this committee's report back into the House. I think that deals with both 29 and 30.

On 31, this recommendation deals with contents of the annual report. I did use this as an example in my introductory remarks. I am committed to reporting the outcome of these cases that the committee has expressed interest in, where a tentative or a final report has been made. Beyond that, there are only some qualifications that I have, and they have to do with protecting confidentiality. As I've said, we've explored that already and the committee understands my views on that.

Recommendation 32 makes it clear that the committee no longer wishes to review complaints from the public with a view to making recommendations on my handling of a particular case. I certainly welcome this recommendation, and it is consistent with my office being the place of last resort. It was never thought that the committee would be the court of appeal, and I agree with that.

Recommendation 33— and you can see, Chair, I'm just going to motor along here — deals with the establishment of an internal complaints process for complaints I receive about my own office. This report was done in 1993. We in fact have created and implemented such a process, which I described in last year's annual report. In this year's annual report, I'll be reporting on the complaints we got about the office and what has happened with them. I'll be very happy to hear any feedback the committee will have on that process or indeed on how we report it in the annual report.

Recommendation 34 deals, again, with rule-making. This recommendation I've commented on in part in talking about rule-making generally, but I would like to mention one thing in particular on this one. This recommendation seeks an amendment so that I would be able to disclose information to committee about the handling of a particular investigation, provided that the member of the public who complained agreed.

At the moment, as you know, the act makes it very clear that I can't disclose to anyone information about an investigation, even that an investigation is under way in fact, except perhaps in exceptional circumstances, and even that's not clear. But I can't disclose information to anyone unless I do it through a report, either a recommendation-denied report or the annual report.

The reason I understand that was put into the act is to protect a couple of things: first, of course to protect the investigative process so that the world is not on notice each time I'm doing an investigation; second, to protect the privacy of the person who's complaining; third, and this is the part I would like to raise with committee, it's done to protect the public servant or servants who are being complained about. I get many complaints, many allegations that are subsequently unfounded, where I issue a non-support report.

I would be concerned about being required to disclose information about those in a public forum where someone's reputation may well be damaged by an allegation, and we all know allegations are damaging reputations every day. People seldom wait-to read the final report. I'd be very wary of a change that would compromise that. It is a very delicate balance that's been struck in the act, and I would encourage the committee to be mindful of that balance as you think about this recommendation some more. I think this would very quickly lead to a lack of cooperation on the part of public servants.

Recommendations 35, 36 and 37 all deal with statistical reporting. I've grouped them in my response under "Annual Reports" and "Ombudsplan." Again, you have a detailed response from me on each one of these. Basically, since this report was tabled in 1993, we have made changes to the statistical reporting in the annual report and last year, for the first time, produced an appendix to the report which gave even more detail on statistics. We reported by riding, for example.

I think we certainly tried to accommodate a good number of the concerns that were expressed in the 1993 report, and I'm happy to talk about this further, any other questions that members may have. Other than that, I'll leave my written comments stand as they are.

Recommendations 38, 39, 40 and 41 all deal with the theme that I've called "estimates and directives." These two were dealt with in the introductory remarks and the comments I made earlier on estimates review.

The one thing I would add a footnote to is recommendation 40, which proposes the act be amended to require my office to adhere to the Management Board of Cabinet's Directives and Guidelines. I'd just like to draw to the committee's attention that those guidelines were developed for a bureaucracy of about 80,000 public servants. They're not always appropriate to an organization that has less than 100 people. I do have a collective agreement, and I do have my own internal policies and directives which we've developed to govern the way our office functions. I did speak to this a bit in the annual report.

My ongoing concern would be that we have that room to have guidelines and directives that are not only fair but are appropriate to the size of our workforce. Also, once again, I think it's important to be clear that we are separate from the public service in what we do.

Having said that, I can tell you that in doing our own policy directives and guideline creation, we do have a mind to what the Management Board ones are. There are often good ideas there. Indeed, they're often the subject of my investigation.

Recommendation 42 speaks to the makeup of the standing committee. Again, I think this is of course for the Legislature to determine. I have some points I've offered some advice on, and those have been made available to the committee.

Recommendation 43: Similarly, how the Legislature operates is of course a matter for the Legislature, and I have put my own views before you on some concerns I would have about the public desire for scrutiny, consultation and checks and balances.

The last one is recommendation 44. It's kind of a mega-recommendation which brings together all of the previous 43 recommendations and lumps them together in an overarching revision of the standing orders for the standing committee. It deals not only with the relationship between the committee and my office on estimates and directives but on rule-making, monitoring and reviewing, the appointment of the Ombudsman and so on and so forth. I think I have dealt adequately with all these issues elsewhere in my comments, both in the introductory remarks and our earlier hearings, so I don't propose to repeat my views on each of these themes save to say, as you read 44, have a look at my earlier remarks and the passage I've put in the written submission on each of the subsections of recommendation 44.

That concludes the tour of 19 through 44, and I'm very pleased to answer any questions members may have.

The Chair: I open the session to questions or comments from the members, looking first to the government caucus.

Mr Stewart: What has come out here over the last number of weeks, not only from you, Ms Jamieson, but also from a number of people we've had from other countries and other provinces who have given us an indication of how they operate, and it seems to be coming up more and more in my mind all the time, is accountability versus independence. At this point in time, I can appreciate your concern that you must have independence, and I am very much in agreement with that. The problem I have, though, is where the accountability comes into effect, whether it be to a committee, to the province, to the government, to the taxpayer, whatever. There doesn't appear to be any link between those two, and that concerns me.

I'm not in any way suggesting or pointing fingers or whatever, but the word "accountability" does not come up very often; "independence" does. When we're looking at spending a number of millions of dollars in an organization without an accountability factor there, I guess I get a bit concerned.

I asked the question one day, maybe it was on the Ms C thing, "How many dollars did it cost to do that, and how long did it take?" There was no great response. As a person representing a number of the taxpayers of the province and as a businessperson, it's an area I have grave concerns for.

I don't know whether that's a question or a comment, but it is a concern. I think both have to go hand in hand, and I'm only hearing the independent part of it, and that gives me concern.

1040

Ms Jamieson: I certainly would agree with the member that they have to go hand in hand. I think why maybe you feel you've heard more from me on independence is because the direction the recommendations go in is to alter that balance at the cost of independence. I think the balance is there today. Let me just explain what I mean when I say that.

On the issue of accountability, let's talk for a moment about financial accountability. It is very clear that I'm financially accountable, both in the presentation of my estimates — which I put in front of the Board of Internal

Economy, and I assure you this is a process that is not without scrutiny or questioning from all parties. It is the same process that applies to all the officers in the Legislature, including the auditor and other officers I've mentioned.

One, the estimates review process; two, the audit that is done every year by the Provincial Auditor, which I publish publicly; three, from time to time he has done a value-for-money audit, which I tabled as well with the Board of Internal Economy. On the issue of money, financial accountability, I think that is clearly in place.

You talk about case-cost analysis. I have seen some of my colleagues attempt that analysis in other jurisdictions, and I've thought about that, frankly, and continue to think about it over time. It sounds as though it would make very good sense from an accounting point of view, and it would be very simple for me to say, "So, \$7.5 million divided by 29,000 and whatever cases, inquiries and complaints equals cost per case." That would give an answer, but it would not be one that I think has quality or value, and this is why: There are different categories of activity on those 29,000 — let's call them 30,000 issues that come forward. Some take very little time; others take months. For us to do an analysis — and we have looked into this — how would we break it down? The ones that are early resolution ones, how much does that cost? The ones that take more work, the ones that take a full-blown investigation ending up in front of this committee, what does that cost?

That may well involve docketing, which is what legal firms do, right? Every time they do something, they write it down. "Talked to Ms C about the file." Their budget goes up and down according to their docketing and their billings; mine, of course, doesn't. I have a fixed budget, and I can't turn calls away unless they're vexatious or frivolous; very few are. I'm obliged to respond to every case. That's another thought, I would ask, to keep in mind.

In looking at the cost-benefit of putting into place a docketing system to get that result, at this moment I'm not convinced there's a cost-benefit to it. In fact, it would take a great deal of time to put it into place, and I wonder what the value would be. Having said that, at this stage, I continue to review how my other colleagues do it; I've thought about how we might, and we continue to discuss these issues.

Parallel to that, and this will answer another part of your concern, Mr Stewart, while we haven't put in place a docketing system, we have put in place time lines for internal activity, management systems that make sure — and they're continually being improved — we're not spending too much time on a file, that the time spent is quality time spent and managing the performance of staff to ensure we are handling the cases effectively and efficiently. We are putting that in place.

Mr Stewart: I don't think accountability solely is directed towards dollars and cents either.

Ms Jamieson: Okay.

Mr Stewart: I guess that also is the other part of the question, where you're saying that in your operation you want to be totally independent with basically no accountability to anybody other than the Management Board

when it comes forward that you have to do your budget etc.

I guess my concern is that every one of us in society today in some little way has to be slightly — I hate to use the word "police" — have some type of control. I don't like that word either, I'll eventually find the right one, if you get what I'm trying to say. It's great to be independent and nobody will tell me what to do because they may think we are being run by the government or whatever. But when I look at government, there happen to be three segments of making up government, which are opposition and government, and I think that we — and that's what I look at as government — should have some type of control within, still giving you your independence but to still have some type of that, again, to go back to accountability.

Ms Jamieson: Let me talk about the aspects other than financial. As I said before, I think the balance is right. The Ombudsman Act, beyond the financial accountability, goes on to require me to table an annual report, which I do and which is referred to this committee and provides quite an opportunity for a dialogue and answerability to the Legislature for the activities of the office on a yearly basis. I don't think, frankly, given that we haven't met on my annual report in a couple of years, we have explored the extent to which that is a useful accountability mechanism. I think it is and I take it very seriously, which is why I report as I do. I think that should not be overlooked. That is a very key aspect of accountability.

The ultimate accountability check and balance is that if the Ombudsman of the day is determined by the Legislature not to be doing his or her job, they can be removed for cause. I think there are aspects, a very clear balance on accountability, in the act, while assuring the independence.

The last thing is on cases. You've seen with the case of Ms C and with inmates on remand, where government will not implement recommendations, I have to come and defend every one of those to this committee. I also report my cases in the annual report.

Let me put the last footnote on accountability, and that is the accountability I feel towards members of the public, that every time I sign off a report which says I don't support the complaint, I'm obliged under the act to outline in writing what I found and what my findings are and to substantiate it. I think the public is also entitled to hold me accountable to ensure that the proper independence is available to my office so that I can do my job, knowing what their scepticism is about the ability of government or political influences to control my office. I think the balance is right. I think the accountability mechanism is in place and is very clear.

The Chair: I don't intend to be bound by the rules of rotation but I want to give the opposition parties a chance to get their bit in before we return to the government caucus. I have Mr McLean on my list so far, but I want to give the opposition first a chance to make a comment or ask a question.

1050

Mr Pat Hoy (Essex-Kent): If I could, I'd like to get two small points made here, or questions. I appreciate your being here again. We went through some 20 pages of recommendations the first time and about 30 now, and it's good that we have all your views enunciated thus far, along with the other people who have been here for the public part of the hearings.

You mentioned this morning, and I just want to go back to that, that your budget was cut 20% last year by the Board of Internal Economy, so there is therefore some policing of what you're spending.

Ms Jamieson: Very much so, Mr Hoy.

Mr Hoy: For my benefit, and hopefully the benefit of all committee members, if your caseloads are not known, you don't know from this date to a year from this date how many cases you may have, how do you service the people who come to you when your budget is reduced? How do you have any predictability of how you will handle cases? Clearly your budget is not open-ended, so can you describe for me briefly how you handle an unknown number of cases with time limits that you would not know? Some may take you a few weeks; some could take you conceivably months. How do you deal with that?

Ms Jamieson: This last year with some difficulty, because I asked for more money than I was given on the basis of our projected caseload, our experience of 20 years and what I thought was required. The board did not approve what I asked for, so we have been left to cope with a caseload with 27 fewer people, because that's what the 20% cut translated into on the ground in my office layoffs.

My remaining staff have done an outstanding job in dealing with what's been a dramatically increased load for each and every one of them in the investigations and intake area. That is really what we've done to date: We have done more. We have done more but we have had fewer people. I mean each one of us has done more. We've had fewer people answering telephones, though, to be honest, because the layoff occurred and you just had fewer bodies at the phones, so fewer people taking complaints.

We've also given a good deal of thought to how to create a system of managed backlog. Frankly the backlog we anticipated occurring was later in the process. I thought there would be much more of a backlog in those ready for investigations. In reality there's been much more at the front end and that was a function of layoff, among other things.

So we have fewer people — from 110 to 84 people — doing about the same number of complaints with a slight decrease at this stage, I think — we're still analysing that — and just doing more work, probably slower — we're analysing that as well — and under some strain. I am very concerned at this stage about our ability to serve the public to the standard that I think we ought to be serving them. We're not doing as much public education as we were, which I think is key. If you don't know you've got the right to complain, do you have the right to complain? I don't think so. I'm troubled by that. I hope that answers your question. I'll be doing much more detailed analysis and reflection in this annual report, because we're just coming to the end of our fiscal year right now.

Mr Hoy: Could I have another brief question? Recommendation 13 on page 15 says the Lieutenant Governor in Council may add governmental organizations to the schedule by order. I believe we touched on this perhaps even last year when you were here. You made the point that if you make a list, omissions could be made, and you gave an example of one of the government boards, that if you missed it, it might cause a problem — the creation of new boards, commissions, agencies — the listing would have to be constantly revised and you thought that might be a problem, and I understand that. Then you also went on to talk about privatization and it wasn't clear -I don't think you were clear at the time — how the government was going to handle that question. I've learned, and I believe this to be correct, that you have written to both the Premier and the minister for privatization about your concerns. Have you gotten a response from them to your letter?

Ms Jamieson: You're quite right. Things have unfolded quite quickly since I wrote this submission. I wrote to Minister Sampson last September. I have met with him. Last week I shared a letter that I wrote to the Premier. I have not met with him.

I remain concerned about the loss of the right to complain if steps are not taken to preserve it when whole sectors are privatized. In meeting with Mr Sampson, it is not clear to me that there is an overarching approach or commitment to retain the right of complaint as whole divisions are privatized or moved over to be self-regulating. Indeed, what's becoming clearer is that auto dealers may well have the last word on auto dealer complaints. If safety enforcement is similarly self-regulating, amusement rides will not be — that complaint ability will be gone; safety, elevators. I am very concerned about this and I don't think enough time and attention are being put on it.

We've met with Minister Tsubouchi's staff on some of the areas, on the areas of Bill 54 that I'm talking about, self-regulating. On Minister Sampson's area it's not clear yet what's going to be privatized; lots of candidates are being talked about. The Ontario Housing Corp is being talked about; Hydro has been talked about; Ontario Clean Water Agency has been talked about. I'm very concerned, if those move off to private areas, that they'll be beyond the reach of certainly investigation, independent investigation by my office, and that people will be left complaining to the private corporation, and if their issues aren't satisfied, they'll be left with only going to court. That will be the only area that's left, and we know what the lineup is like at court and we know what the cost is. I don't know about you, but I couldn't sustain a court action, certainly not against the government, up through the various levels.

I continue to be very troubled and I'm hopeful that the Premier will respond and will give an explicit direction that the right to complaint will be preserved where it exists and will be provided where it doesn't exist: namely, municipal areas.

I'm sorry, I've gone a bit beyond your question but I remain concerned, about jails as well. If we privatize jails, what happens to the responsibility of government for the care and custody of inmates to keep standards up

to some of the — we're bound internationally on standards of the treatment of prisoners; we have domestic laws that bind us to a certain level. At the moment, inmates who are at the receiving end of a very dramatically different power imbalance can come to the Ombudsman to complain. If it's not made explicit, as private jails are created, that that continues, it will be gone, and I don't want it to be gone either by oversight or certainly by design. That's why I've raised the issue with the Premier, to make sure that he focuses on it and hopefully gives some assurance that that is being taken into account and is being provided.

1100

Mr Len Wood (Cochrane North): Thank you very much for coming forward in the second day now, going over the 44 recommendations that look back to 1993. I know you were up into my area around Constance Lake and into Timmins the week before that. I appreciate that very much. It helps. Some of the complaints that would have come to my office I'm sure went to your office.

You mentioned the 24% reduction last year, but that's not the only reduction when we're talking about accountability. I'm sure you had some controls during the expenditure controls and the social contract that lasted for three years, and then at end of that a further 20% reduction, the 27 fewer employees. Have you had to restrict your amount of travelling or the number of employees who can travel now throughout the province? I'm sure that some areas you would probably visit twice a year. Are you only able to visit them once every two years now? Just an idea of how that's affecting your outreach.

Ms Jamieson: Before I answer that, Mr Wood, I just want to be clear: It's not 24%, it was a 20% reduction last year.

Public education and outreach are certainly the area where we have been doing less and being very careful in managing any travel funds we have to do outreach and to do public ed. I would like to do much more. I think an office like mine should be out and about much more than we are, but those are the realities that we have been living with. I can't give you in numbers the number of trips we would have made and the number of trips we did make but I can tell you that, yes, those activities have been curtailed.

First of all, we don't have the people in some of the offices who could do it. Some of our offices have gone from two people to one-person offices, where we used to be able to have one person out doing the outreach and the other person running the office. That's gone now in some places. We've got one person trying to do both, trying to be open for business and trying to serve communities. As you know in the north — just two weeks ago, in going from Timmins to Constance Lake, I don't know about you, but for us it was a three-and-a-half-hour drive. If I have a staff person doing that, that really limits their ability to also be running the office as well as we might. So of course I'd like to do more, and yes, we have had that limited.

We've tried to work with what we've got, though, in the face of that. We've said if an investigator can't now fly up to Thunder Bay to look at a particular area that's being complained about, whether it's an environmental assessment issue, maybe it's an issue having to do with MNR or the Ministry of Transportation, where a site visit would be a good idea, we're using our regional staff as much as we can to go and do those things and then report back to the investigator. So we've managed as best we could, but yes, I'd like to do more and we should be doing more.

Mr Len Wood: We know that privatization is the big buzzword now that is out there. Every weekend when I go back I hear the word "privatization," what's going on in the schools, what's going on in the municipalities, what's going on in the health care sector, not only with the direct government employees who have been reduced by a few thousand — that's another number that would probably be contracted out if Bill 104 goes through and some of the other bills in the series. Your office has been reduced; my particular riding has been doubled in size so that it's going to be very difficult for the provincial member of Parliament to get around; the federal boundaries have all changed; and like I said before, you have fewer employees.

Where are the people going to be able to go as a last resort, trying to get their problems resolved, if everything is being squeezed down, or is there going to be an avenue for them to turn to with all the major changes that are taking place?

Ms Jamieson: At the moment, if you have a complaint about social housing, you can come to my offices for a complaint; if someone's not being treated fairly by a housing authority, for example. If, as is being discussed, the Ontario Housing Corp is privatized, that'll be gone. You'll be going to the courts. If, as is also being talked about, social housing may go to municipal governments, then you're still out of luck because there's no municipal Ombudsman, which there ought to be. I get more than a couple of thousand complaints a year on municipal issues. So if we're adding things to the municipal level and not adding the right to complain, it ends up being a net loss of the right to complain. That's why I spoke out last week.

If you're complaining about jails, if you're complaining about real estate transactions, if you're complaining about travel issues or motor vehicle issues or amusement rides or elevators and the government's actions to make sure those standards are maintained, you will not have anywhere to go unless it's provided for in the administrative agreements that are being signed or in the legislation, or unless a schedule — as Mr Hoy mentioned earlier, if the Ombudsman Act is amended to leave the definition of governmental organization in place now, but then, say, we can add by schedule new organizations where the right to complain will be guaranteed, then those could be added explicitly. You'd name the agencies and you'd change the schedule, as you change your list of agencies, as you change your names, which is happening now more and more. Whole agencies are being combined or revised in simply their title.

Unless that's done, unless it's clear in law or by schedule or by the administrative agreement, people will not have anywhere to go for a place that can do an independent investigation. They'll be able to go and complain — and this is what is being talked about now.

I've seen and read in the press lately, and you have Minister Tsubouchi saying: "Well, on some of these agencies we've made sure that consumers are going to be represented. We've made sure that there's going to be people on there — the board of directors will have the right checks and balances."

But this point has been missed: That board will not have the ability or the power, and the consumer reps on there will not have the power, to do an independent investigation. That is going to be lost if that is how they're constructed. So while you may have two or three consumer reps on any given board advocating for public protection or protection of public rights, you will not have the ability for them to do the investigation or to come forward with independent findings. So where are you left? You're left back in the lineup at the courts.

Mr Len Wood: Just briefly, the \$7.5 million, your budget, compared to the \$8 million that is being spent to see Mike Harris's face on TV, I think the \$7.5 million spent over a year for the Ombudsman's office and staff —

Mr Tom Froese (St Catharines-Brock): That's out of order, Mr Chair.

**Mr Len Wood:** I think that's money better spent than seeing Mike Harris on TV for two months for \$8 million.

Mr Allan K. McLean (Simcoe East): I just have a couple of questions with regard to the first question on accountability. Your budget has never been to the estimates committee before, but they're still allowed to go to the estimates committee if they wanted to have it. Is that right?

Ms Jamieson: I'm not sure, Mr McLean, whether it's ever been. I just don't have that history in my mind. As I understand, that's available for all public sector institutions, the ability for estimates committee to review.

1110

Mr McLean: That's right. So if the estimates committee wanted to review your budget, they could.

Ms Jamieson: I believe that's true.

**Mr McLean:** So there is accountability there, if they so desired. Thank you. I wanted to clarify that.

Mr Hoy: You picked up again about boards of directors under privatization. Not that the standing committee could become a board of directors, but I'm speaking in terms of new privatized entities that will have their own mechanism of policing and self-regulation.

I'm trying to think of the phrase and the words — I don't think I have exactly the right ones — but a lot of crown corporations and people who belong on those boards are protected by a clause that says if they act in good faith or if they act in good conscience — and I may not have the exact words; I was trying to recall what they were — it is for them a protection that under certain laws they can't be held accountable to the extreme if they acted in good faith or good conscience. Could they hide behind that under a self-regulatory consideration of their board or agency and then shield themselves and no one would be able to go to the Ombudsman?

Ms Jamieson: I'm not sure about the current state of the law on protection under the Corporations Act, but I can tell you it's less today than it was a couple of years ago.

What is clear to me, though, Mr Hoy, is that private companies are responsible to their shareholders, pure and simple. That's how they're created. That's the nature of the entity. If it's a private company, that's who it's responsible to, which means not responsible to government other than is provided in the agreement. If in creating these private entities, whether it's for the lottery corporation or clean water or housing, government divests itself of its relationship to make sure certain standards are upheld, then there is no place for the public to go back to government and say to Minister Tsubouchi: "What about this real estate group? What about this auto dealer group? They're not listening to me."

They could go back to Minister Tsubouchi and he could sever the agreement, I suppose, but short of that there is no way for ongoing, day-to-day unfairness to be remedied through government hearing complaints, and as a result, if you don't get to government, you don't get to the Ombudsman. Every time you sever that relationship between an agency and government, people are losing the right to complain to the Ombudsman and the right for

independent investigation.

That troubles me, especially in areas where there are overriding safety issues, where you've got care of people who are vulnerable, shelter for people who need social housing, any of these areas where clearly there has always been an understanding that there is a government role to be played, and that worries me. I hope that responds to your question.

Mr Bill Murdoch (Grey-Owen Sound): It's always nice to hear from you, Roberta, at these meetings.

First of all, I'd just like to say that if this committee is ever going to work, it has to be a non-partisan committee. I am really disappointed in the two opposition parties and their comments that have just gone on. You guys didn't sit here through this committee report. I did. I want to tell you that all three parties have worked well together, but you two people or your two parties have just — it's unacceptable what you've tried to put on here today, trying to get partisan. This committee has in the past worked great. What you've just done is unacceptable and I'm really disappointed in both your parties for what you've done here today.

That being said, Roberta, we didn't always agree in the past and we probably won't in the future, but I think this is part of government getting away from — less government for the people. What you're saying and what these two parties have tried to bring in is spending more taxpayers' money. The people out there quite clearly said they wanted less government. I never did agree with you before on a municipal Ombudsman and I never would. I think the role of the Ombudsman can actually be downgraded. You don't need as much responsibility once we go to private enterprise. There are lots of ways in private enterprise that people can be looked after.

People don't want to be looked after from cradle to grave by government. I really disagree with all your comments about more powers to the Ombudsman or more ways for people to complain. I think there's enough in the private sector now that we don't need more. I just wanted to put those things on the record. It's fine for you to have your reasons; I just don't agree with you.

The Chair: Thank you very much. Any response?

Ms Jamieson: Just very briefly. I think it is my responsibility to speak out when the right of complaint is being endangered, lost, forgotten about, what have you. I think that is the business of the Ombudsman. I wouldn't be doing my job, in the public mind, if I didn't alert government as I have done over the last year. I talked about privatization and the right of complaint in the last annual report. I've talked about the municipal Ombudsman for a couple of years. Why? Because there are many, many complaints that go unaddressed, and there are lessons to be learned, good experiences to be shared, from other jurisdictions.

In Nova Scotia, in New Brunswick, most recently in British Columbia, the opportunity to complain about the decisions of municipal governments have been extended. The city of Winnipeg has just created an Ombudsman in the last year and a bit; the city of Montreal has created an Ombudsman. Many cities themselves are taking these steps and many other governments are extending it. Even though I certainly hear a good deal — I'm not immune to reading the press about less government. What I have heard, though, at the same time from many people is, "But don't forget about that right of complaint, indeed extending it in the private sector." I think that's all.

Mr Hoy: Mr Chairman, my line of questioning with regard to recommendation 13 was of an inquiring nature. I made no comment as to whether certain actions by the government were good or bad. The Ombudsman brought it up previously before the committee. I was simply asking her for an update and what she thought could happen to persons who were perhaps victimized by certain future actions of the government. I did not comment whether those actions would be good or bad. It was of an inquiring nature, and I don't feel that the rebuttal by the previous member to my line of questioning was necessary. I made no comment as to whether what the government may do or may not do is right or wrong. I just want to put that on the record. It was the Ombudsman who brought up this issue. I was looking for an update. She has been investigating over some period of time what would happen under certain actions by the government, and I simply wanted an update. I think the remarks were uncalled for.

1120

Mr Len Wood: We can be accused by the Conservative caucus of being partisan if they want, but I also sat on the committee through the 44 recommendations. I covered that at the beginning, that I thought there were a lot of good recommendations there and I was pleased to see the response coming back and going into a dialogue.

The only other comment I would make is that I'm sure thousands of people out there are going to agree with me that a \$7.5-million budget for the Ombudsman, compared to an \$8-million waste of money for Mike Harris on TV — that's money wasted where this is money well spent, listening to the complaints process coming through. I'm happy with that and I'm pleased to see that we're seeing good dialogue coming through on how we can better the Ombudsman's office as a result.

The Chair: I'm going to suggest that that particular issue has now been fully aired, and I ask everyone to now focus on the report once again.

Turning to the government caucus, any further questions or comments? Okay. Mr Patten, did you want to get back to your earlier point?

Mr Richard Patten (Ottawa Centre): I had a point to make, but I want to say to Mr Murdoch that I'm disappointed to hear his response. I don't think it was warranted to generalize.

Mr Murdoch: I was disappointed first, though.

The Chair: I said I've heard enough on that. Let's

focus on the report.

Mr Patten: If I understand some of your overall major concerns, Ms Jamieson: By virtue of privatization is there still an accountability, the right of complaint, and then of course related to the provincial jurisdiction versus the municipalities' jurisdiction? There was one response you had here in terms of an all-party committee. How many all-party committees, the balance of all parties, are there in Canada or other jurisdictions? Is that a model that is more and more being adopted or does it tend to be controlled by more members from the government side, as we have here?

Mr Murdoch: As it always has been.

Mr Patten: Oh, I agree. You're very touchy today, Mr Murdoch.

Mr Murdoch: I've sat in this committee for a long time and I've never heard this kind of stuff, especially from the NDP. They were so easy to work with in government.

The Chair: Knock it off. We're here to discuss the

report.

Ms Jamieson: Thank you, Mr Patten, for the question. I can't take you across the country quickly on committees, but I'm happy to get back to you on that answer. I think we can find the information.

There are few committees in Canada on the Ombudsman. There may be only one other parallel, and it's not a committee on the Ombudsman; it's the Legislative Assembly committee in Alberta. It's an unusual arrangement here.

What would I see as the ideal structure? The structure that would make sense to me would be a committee chaired by the Speaker of the House as the senior, independent officer of the Legislature, and two members from each of the parties of the House. You would not have any majority. You could put other rules into place so that you could ensure that opposition parties wouldn't dominate over government parties. You could say that any resolution would have to be voted upon by at least one from each party, those kinds of safeguards. I think it is long overdue that such a committee be created.

If I can share some information with the committee, a year or two ago — I think it's two years ago now — the officers of the Legislature came together with then Speaker Warner and put forward a suggestion to the Legislature that such a committee be created for all officers of the Legislature to relate to. I thought then, and I think now, that the suggestion has merit. If you're talking about amendments to the Ombudsman Act or indeed any other act of the officers, you may want to have such a committee which is balanced and which is clearly non-partisan in appearance and in reality. Those are my thoughts. That letter that was written a couple of

years ago might be worth dusting off and having another look at.

Mr Patten: Sometimes the argument is framed as accountability versus independence, and it seems to me that those two should not be woven against each other but rather that both are important. Because there is strong accountability does not mean there can't possibly be the independence that I think people require.

Also, when some members talk about people wanting less government, that doesn't mean they don't also want to have a voice. What I find as a member in my office — and there are many more complaints relative to when I was a member before — is that people keep calling back. I suggest they call the ministry. They call the ministry. They get a runaround. It's a loop that ends up going absolutely nowhere, and eventually they may end up in your office or we take on the case directly and try to intervene.

Mr Murdoch: That's just because you've got voice mail.

Mr Patten: No, we don't have it.

But I think the independence is important; otherwise, people will lose faith in their government if they don't feel there is a just mechanism to deal with the government. Even though government is smaller, it's still pretty darned big.

The Chair: Any other questions or comments? There being none, Madam Ombudsman, I thank you for — I

see you have a comment.

Ms Jamieson: Just one or two things I'd like to leave with the committee. This is my last appearance on this round. I'm not quite sure what the committee proposes to do next or how the process will unfold, but I want to indicate a couple of things.

One, I want to reiterate my very sincere commitment to work cooperatively with this committee in its work. I want also to say that as the process unfolds, I would very much like to have further input should the focus become one of proposing amendments to the Ombudsman Act.

If that happens, if that is a mandate explored by this committee or given to this committee, I have some thoughts on amendments to the Ombudsman Act myself. I have not identified them in this process, but if you focus there, I would be happy to do so. Having been in this post now for more than seven years, I certainly have some thoughts and hear from the public their thoughts that I'd like to register.

One of them will be no surprise. Every time I am introduced or attend a public function, the issue of the title is raised with me, the fact that it is not a genderneutral word. We can all talk about it being a Swedish word etc, but it does not portray a gender-neutral image. That's just one area.

If you do start focusing on amendments to the act, I would very much like an opportunity to come back and speak with the committee and put forward my thoughts

on other areas of the act to be changed.

I also want to draw to the committee's attention the fact that I received a letter that was dated November 25, 1996. That has been forwarded to the committee. The letter came from the president of the International Ombudsman Institute, Martin Oosting, who is also the Ombudsman for the Netherlands. The contents are self-

explanatory. At his request, I have provided it to the committee and understand that it will form part of the formal record of the committee's review.

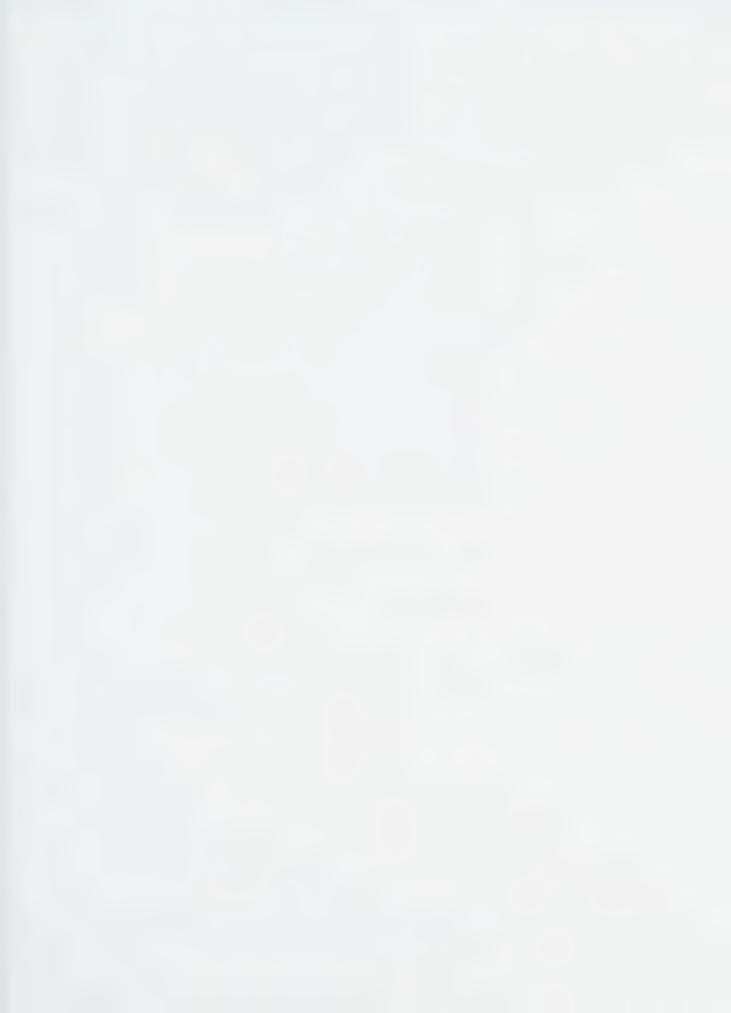
I also want to mention that I remain available and willing to meet with the committee on some of the other matters on the list of agenda items that remain outstanding: the annual report, of course; the Ombudsman fairness standards, which we put together and forwarded to the committee; further discussions you may want to have about the right of complaint and restructuring of government beyond privatization and including privatization. If

the committee wants to talk about those matters some more, I'm happy to do so, to explain how the right to complain, for example, can be preserved and what role this committee might take in that.

With that, Chair, I simply want to wish the committee well in their further deliberations. If I can be of any help, please call upon me.

The Chair: Thank you very much, and thank you for assisting us in our process. This meeting is now adjourned.

The committee adjourned at 1131.



#### **CONTENTS**

#### Wednesday 5 March 1997

Review of the Office of the Ombudsman	B-115
STANDING COMMITTEE ON THE OMBUDSMAN	

Chair / Président: Mr John L. Parker (York East / -Est PC)
Vice-Chair / Vice-Président: Mr Tom Froese (St Catharines-Brock PC)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mrs Barbara Fisher (Bruce PC)

Mr Tom Froese (St Catharines-Brock PC)

Mr Pat Hoy (Essex-Kent L)

Mr Leo Jordan (Lanark-Renfrew PC)

Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

Mr Rosario Marchese (Fort York ND)

Mr Bill Murdoch (Grey-Owen Sound PC)

Mr John R. O'Toole (Durham East / -Est PC)

Mr John L. Parker (York East / -Est PC)

Mr Richard Patten (Ottawa Centre / -Centre L)

Mr R. Gary Stewart (Peterborough PC)

Mr Bill Vankoughnet (Frontenac-Addington PC)

Mr Len Wood (Cochrane North / -Nord ND)

\*In attendance / présents

Substitutions present / Membres remplaçants présents:

Mr Allan K. McLean (Simcoe East / Est PC)

Also taking part / Autres participants:

Ms Roberta Jamieson, Ombudsman

Clerk pro tem /

Greffier par intérim: Mr Douglas Arnott

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

#### Calendar

XC 99

#### Standing committee on the ombudsman

#### **CONTENTS**

First Session, 36th Parliament

Wednesday 30 April 1997

**Election of Chair** 

**Election of Vice-Chair** 

Appointment of subcommittee

**Briefing** 

#### STANDING COMMITTEE ON THE OMBUDSMAN

Chair / Président: Mr John O'Toole (Durham East / -Est PC)

Vice-Chair / Vice-Président: Mr Trevor Pettit (Hamilton Mountain PC)

Mr Dave Boushy (Sarnia PC)

Mr Pat Hoy (Essex-Kent L)

Mr Ron Johnson (Brantford PC)

Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

Mr Gary L. Leadston (Kitchener-Wilmot PC)

Mr Rosario Marchese (Fort York ND)

Mr Allan K. McLean (Simcoe East PC)

Mr Bill Murdoch (Grey-Owen Sound PC)

Mr John R. O'Toole (Durham East / -Est PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr John L. Parker (York East / -Est PC)

Mr Richard Patten (Ottawa Centre PC)

Mr Trevor Pettit (Hamilton Mountain PC)

Mr Len Wood (Cochrane North / -Nord ND)

#### Substitutions present / Membres remplaçants présents:

Mrs Barbara Fisher (Bruce PC)

Mr W. Leo Jordan (Lanark-Renfrew PC)

Mr R. Gary Stewart (Peterborough PC)

Mr Bill Vankoughnet (Frontenac-Addington PC)

Clerk / Greffier: Mr Franco Carrozza

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

The committee met at 1017 in room 151.

#### **ELECTION OF CHAIR**

Clerk of the Committee (Mr Franco Carrozza): Good morning, ladies and gentlemen. I must inform you that there is a vacancy for the Chair of the committee. I will now open for nominations.

<sup>\*</sup>In attendance / présents



Mr Jerry J. Ouellette (Oshawa): I'd be proud to nominate the member for Durham East, Mr O'Toole.

Clerk of the Committee: Thank you. Any other nominations? There being no others, I shall now close the nominations and ask Mr O'Toole to take the Chair.

#### **ELECTION OF VICE-CHAIR**

The Chair (Mr John O'Toole): The first order of business is the election of a Vice-Chair of the committee. Are there any nominations?

Mr R. Gary Stewart (Peterborough): It is my pleasure to nominate Mr Trevor Pettit to serve as Vice-Chair.

The Chair: The nomination of Mr Pettit is moved by Mr Stewart. Any other nominations?

Mr John L. Parker (York East): I can't think of anyone more suited than Mr Pettit.

Mr Trevor Pettit (Hamilton Mountain): Thank you, Mr Parker.

**The Chair:** Motion to close the nominations? Somebody to close the nominations? Closed. All those in support? That's agreed. Congratulations, Mr Pettit.

#### APPOINTMENT OF SUBCOMMITTEE

**The Chair:** I'm looking for a motion with respect to the establishment of the subcommittee on committee business.

Mr Jean-Marc Lalonde (Prescott and Russell): I nominate Pat Hoy.

Mr Len Wood (Cochrane North): I move Rosario Marchese.

Mr Stewart: I move Mr O'Toole and Mr Parker.

Clerk of the Committee: Could someone read the motion into the record.

Mr Stewart: I will, Mr Chairman, if you wish.

I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; that the subcommittee be composed of the following members: Mr O'Toole, Mr Parker, Mr Hoy, Mr Marchese; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

The Chair: All those in support? That's carried.

To depart from the prepared script here for a moment, I just want to briefly make my remarks and thank you very much for your support. I hope I'm up to the challenge first of being fair and reasonable, and second of being a man of few words. The second part will be a challenge for me as I am given to expressing my views. But I will try to be impartial, fair and a reasonable Chair.

Mr Parker: Mr Chairman, you were put up there to shut you up.

The Chair: I hope that wasn't the only motive; it was a sense of fairness, I think.

Having participated up to this point both as a sub on the Ombudsman committee and in the latter portion as a member of the committee, I would ask the clerk if he would indulge us by bringing us a little up to



speed so we all know exactly where we are, without too much detail.

#### BRIEFING

Clerk of the Committee: I also am new to the committee, but I've been with this committee a number of times before. I think you will notice that I was the clerk of the very infamous report in 1993. My understanding is that you have reviewed the 1993 report, you have found a number of recommendations that you are willing to discuss and review, you have prepared yourself a working paper and in that process you have again invited a number of witnesses to give you their ideas and you have made some recommendations. You were also in the process of finalizing that report. You will have to decide if you wish to proceed with that report, either adopting it or whatever you wish.

Also to bring you up to date, there's another matter with the subcommittee that you must meet to discuss. It is a rather sensitive subject that I do not wish to discuss in open committee. Please think about the subcommittee meeting as soon as you can so you can bring yourselves abreast of that particular information and make a decision on it. Basically that is what I have to say. Perhaps we can call upon Mr Kaye if I've missed anything.

Mr Philip Kaye: Just in terms of the recent public hearings conducted by this committee, I prepared an interim summary of the recommendations made to the committee and then a final summary which was distributed, I believe, in March. It's dated March 19 and is entitled A Revised Summary of Recommendations: Re Submissions on the Ombudsman Committee Report "Review of the Office of the Ombudsman" and Related Working Paper. This summary is organized along the lines of the 1993 report in that it takes the 44 recommendations in that 1993 report and lists the comments made to this committee about those recommendations and the proposed revisions to those recommendations that the committee made in its working paper.

Members should also be aware that apart from the 44 formal recommendations made in the 1993 report there were two areas where the committee did reach conclusions but did not make a formal recommendation. Those two areas were the use of the term "Ombudsman" and the possible expansion of the Ombudsman's jurisdiction to include such areas as complaints against municipalities.

**The Chair:** That report we should all in the future have a copy of or access to. What's the date? March 19?

Mr Kaye: March 19. I don't think I have a copy. Everyone will be provided a copy of that.

**The Chair:** Are there any questions or comments with respect to what the researcher and the clerk have provided the committee? There being none, I would ask if the Vice-Chair wanted to make any remarks to acknowledge his achievement in this world.

**Mr Pettit:** Thank you, Mr Chair. I'm honoured to serve as the Vice-Chair of this committee, and although I didn't serve on it before, I was on other committees. As you do, I look forward to a quick learn and getting on with the business. I would ask that any previous reports or anything you have be forwarded to all the members, especially the new members on this particular committee.

Thank you very much. I look forward to working with all of you.

**The Chair:** Are there any other members of the committee who have any comments at this inaugural meeting?

Mr Richard Patten (Ottawa Centre): Mr Chair, congratulations, first of all.

In light of the report from legislative research, can the recommendations that were not addressed be brought forward as well? That will be part of the whole report to discuss, I presume. But I think we should review the name, which is a very awkward name, and I know there are all kinds of suggestions. I don't want to get into the substance of it, but "Ombudsperson" is a pretty awkward title, and you get into translations and this sort of thing. That might be one focus that would be of interest to the committee and



I think probably to the general public.

**The Chair:** I'm not completely, in detail, familiar with the report but I would ask the researcher: Is that part of the recommendations in the context of that report?

Mr Kaye: It's not a formal recommendation in the report but there is a conclusion in the report.

The Chair: That's what I thought. There was some mention of it.

Mr Kaye: To the extent that this committee decides to report on the 1993 report, then it is an issue this committee can choose to address.

The Chair: Any other comments? No comments. That's fine.

I agree. I think the subcommittee should meet as soon as possible, as the clerk has recommended. In the open session of the meeting is it important to deal with that so everyone knows where we're moving forward. I'd like to meet in May, that would be my idea, and as soon as possible. Is there any preference for a date, or do I just have my office get in touch with you?

Clerk of the Committee: I will do that.

The Chair: The clerk will line up a date in May.

Mr Pat Hoy (Essex-Kent): The subcommittee meeting.

**The Chair:** The subcommittee meeting is what I'm referring to. We'll do that and we'll keep other members informed as well. I don't have any other comments, so I gather we need a motion to adjourn.

Mr Pettit: So moved that we adjourn.

The Chair: Moved by Mr Pettit, and this meeting is adjourned.

*The committee adjourned at 1027.* 

Calendar



FAOQUALITIES



ISSN 1180-4300

## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 28 May 1997

Standing committee on the Ombudsman

Case of Mr A

Review of the Office of the Ombudsman

Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 28 mai 1997

Comité permanent de l'ombudsman

L'affaire M. A

Examen du Bureau de l'ombudsman



Président : John R. O'Toole Greffier : Franco Carrozza

Chair: John R. O'Toole Clerk: Franco Carrozza

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 28 May 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 28 mai 1997

The committee met at 1001 in room 151.

The Vice-Chair (Mr Trevor Pettit): Good morning, everyone. Mr O'Toole is absent today, so I'll be acting as Chair.

#### CASE OF MR A

The Vice-Chair: The subcommittee in their last meeting brought forward a motion, that the Chair respond to Mr A regarding his request to have the committee review his case. Could someone please move that we do that?

Mr Rosario Marchese (Fort York): I move that, Mr Vice-Chair.

The Vice-Chair: That's moved by Mr Marchese. Any discussion on agenda item 1? Should the motion carry? Carried.

Mr Marchese: Mr Vice-Chair, maybe Mr Carrozza can very briefly explain the content of this motion. Otherwise, most of the members wouldn't have a clue what we're dealing with.

Clerk of the Committee (Mr Franco Carrozza): The subcommittee met on the request from an individual that the subcommittee review a specific case he had investigated by the Ombudsman. It is the policy of the committee that once the Ombudsman investigates a case the Ombudsman has the final decision and we do not investigate. The motion confirms that policy. Therefore, the committee moves this motion that the Chair will write the Ombudsman and the individual a letter specifying that we will not be investigating this case.

Mr Allan K. McLean (Simcoe East): That we will not investigate?

Clerk of the Committee: Not investigate.

Mr Marchese: Part of the content of that is to say that the Ombudsman was — I'm not sure we had agreed to say that — set up to review cases of that sort and that once they've done that and have made a conclusion of that kind, we have done our best through that particular office to have dealt with the matter.

Mr McLean: What we're saying here is: The Ombudsman has investigated the case, the Ombudsman has, I presume, deemed there was no basis for the case. That individual has now applied to the committee to have their case brought before this committee to be heard. It used to be, years ago in this committee, that's what we did. We would hear the evidence and determine whether we agreed with the Ombudsman.

What you're saying now — and this is the first meeting, I understand. If this is going to be a process where we're not going to intervene in any cases, what's the purpose of the committee? I thought that was what we were here for: to answer and deal with the Ombuds-

man. If the Ombudsman's decision is going to be final, then what's the point in it coming here?

Clerk of the Committee: If I could clarify that, Mr McLean, this particular case is somewhat different from the cases the Ombudsman brings before the committee to be investigated. This is totally separate. You're quite right that in the past the subcommittee did investigate. It was decided not to do that because it would be like a court of last resort; the committee did not wish to do that.

However, on denied cases, which are totally separate from this, we will investigate those cases once the Ombudsman brings them before the committee. That's just a clarification of what we are doing here.

The Vice-Chair: Any further discussion?

Mr Gary L. Leadston (Kitchener-Wilmot): I feel somewhat the same as Mr McLean. As a new member of this committee, other than the information that's in the motion, I'm at a loss to either support or not support that particular motion. I have no difficulty in hearing whatever Mr A has to say with respect to his case, and that's not diminishing the role of the Ombudsman. If that has been the tradition of this committee, to hear these individual situations, then why is that so difficult?

Mr John L. Parker (York East): Mr Chair, if I could just help everybody out here, this matter has been reviewed by the subcommittee, and the subcommittee has come to the conclusion unanimously that this is not a matter that we recommend the full committee deal with further. The motion brought by Mr Marchese comes with the full endorsement of the entire subcommittee.

The Vice-Chair: Is that clear?

Mr Marchese: If I could just add, Mr Chair, I think whenever there are new members we need to give some form of orientation, not in the whole committee, because then those of us who have been around have to suffer through that a little bit, including the researcher and the clerks, who are well aware of this. But I really do believe that for the benefit of the new members some short orientation would be very helpful, because we tend to go through these questions all the time whenever there are new members. This is not to criticize any members but rather it's useful for people to have that.

The Vice-Chair: A very good point. I could probably use that myself. I guess we would refer that to you. Maybe we could arrange a short orientation for all the new members, okay?

Clerk of the Committee: Yes.

The Vice-Chair: Any other comments?

Mr Leadston: Mr Chairman, in view of what Mr Parker said, then that's acceptable to me.

The Vice-Chair: Good. Shall the motion carry? Carried.

### REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Vice-Chair: The second item today is to continue with the committee review of the 1993 committee report on the Office of the Ombudsman. I believe Mr Kaye is

going to speak to that.

Mr Philip Kaye: The committee has been conducting hearings on the 1993 report, a working paper from last year. Those hearings began at the end of November and finished at the beginning of March this year. The Ombudsman was the first witness and appeared on three separate occasions before the committee. Altogether there were 10 witnesses. Ten further submissions were received in writing only. Several of the submissions came from people who were associated with ombudsmanship. There is a list of these submissions at the back of the revised summary, and when it comes to witnesses associated with ombudsmanship, members will notice that the Ombudsman, as I said, appeared; there was a submission from the International Ombudsman Institute, the Public Protector, or Ombudsman, of Quebec and also a letter from seven provincial ombudsmen, and these seven ombudsmen came from the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan.

I have summarized the recommendations, but, as noted in the introduction to the summary, the briefs themselves and Hansard should be consulted for more detail.

I will be reviewing the recommendations in a general sense and then focusing on specific concerns in seven areas. These seven areas are listed in the memo which has been distributed today. They are (1) the committee's role with respect to monitoring and reviewing the exercise of the Ombudsman's functions; (2) the process for reviewing the Ombudsman's estimates; (3) the exercise of the power to make rules for the guidance of the Ombudsman, including rules governing systemic investigations and the investigation of tribunal decisions; (4) the Ombudsman's authority to comment publicly on an investigation; (5) the method of appointing the Ombudsman; (6) the committee's role with respect to complaints from the public about Ombudsman investigations; and (7) the composition of the Ombudsman committee.

Speaking generally, ombudsmen who provided submissions were concerned about the effect of the committee's recommendations on the independence of the Ombudsman institution.

1010

For an overview of Ontario's Ombudsman's concerns pertaining to this issue of independence, members might wish to refer to the bottom of page 26 of the summary, where it's noted that the Ombudsman took the position that if the public is to perceive the right of complaint to the Ombudsman as a genuine feature of democracy in Ontario, it had to be assured that complaints could be made to an Ombudsman who was independent, not only from those agencies being complained against but also from government and from the political influences of the Legislature. The Ombudsman continued that a balance had been struck between this independence and various mechanisms for holding the Ombudsman accountable to

the Legislature; for instance, the requirement that the office's estimates be reviewed by the Board of Internal Economy, that annual reports be prepared and that annual audits of the Ombudsman's office be conducted by the Provincial Auditor.

The committee's recommendations, in the Ombudsman's view, altered this balance at the cost of independence. The Ombudsman generally supported the recommendations of the committee with respect to public education and outreach, the annual reports and other topics as well, such as authority being given to governmental organizations to make payments to complainants where such a recommendation has been made by the Ombudsman

There were two organizations in particular, the Ministry of the Solicitor General and Correctional Services and the Union of Injured Workers of Ontario, which were on the whole supportive of the revisions contained in the

committee's working paper.

In terms of this committee's mandate, it's set out in the standing orders. Just to quote briefly from the standing orders, they say that the committee is "empowered to review and consider from time to time the reports of the Ombudsman as they become available; and, as the committee deems necessary, pursuant to the Ombudsman Act, section 15(1), to formulate general rules for the guidance of the Ombudsman in the exercise of his or her functions under the act." The standing order then continues that the committee is authorized to report on these matters and make recommendations. That is all there is in the standing orders specifically on the Ombudsman committee. There is no reference to this committee at all in the Ombudsman Act.

As I mentioned earlier, I'm going to review seven issues which were considered contentious in the submissions to the committee, the first issue having to do with the committee's role regarding the monitoring and reviewing of the exercise of the Ombudsman's functions. The key recommendations in this regard are recommendations 16 and 25.

Mr Marchese: Where are you referring to now? Mr Kaye: The recommendations are in this report. The Vice-Chair: They'd be on various pages.

Mr Kaye: Yes. There's a consolidation of the recommendations at the back. On page 151 of the 1993 report there's recommendation 16, which says, "That the standing orders of the Legislative Assembly be amended to provide that the committee shall monitor and review the Ombudsman's exercise of his or her functions and report any changes to the Ombudsman Act that the committee considers desirable."

A very similar recommendation is recommendation 25, on page 152, which reads identically at the beginning, "That the standing orders of the Legislative Assembly be amended to provide that the committee shall monitor and review the Ombudsman's exercise of his or her functions, which shall include inquiring into and reporting on any matters which the committee believes should be brought to the attention of the assembly."

In the 1993 report, the committee acknowledged that perhaps the area which had caused the most difficulty between the Ombudsman and the Legislature concerned

the role of the Legislature when it received communications from the public or an MPP regarding the management of the Ombudsman's office. On the one hand, the committee in 1993 agreed that the Ombudsman should have a degree of operational independence, yet on the other hand, it felt that decisions and developments concerning the management of the office which might fundamentally affect the manner in which the Ombudsman's services were provided were matters in which the Legislature had a legitimate interest.

By way of example, the committee referred to any decisions concerning policies to ensure the political impartiality of staff or to provide French-language services, as well as any developments regarding staff turnover or the closure of offices. The committee added that with respect to decisions and developments of this nature, the Legislature's role was primarily one of requiring answerability on the Ombudsman's part, as opposed to control over the Ombudsman.

The committee expressly states in the 1993 report that particular decisions, such as those to retain a particular consultant or to hire or fire a particular individual, were management decisions into which the Legislature should not inquire. It also distinguished between decisions related to the investigation of complaints by the Ombudsman and decisions related to the administration or management of the office. In the committee's view, the requirement of autonomy applied with greater force in the first area. In the summary, the submissions on this issue appear on pages 12, 13 and 17.

Mr McLean: Do we have a copy of that? Mr Marchese: In the revised summary?

Mr Kaye: The revised summary. Members should have that.

Mr McLean: This is what we have got here.

Mr Kaye: Not the working paper.

The Vice-Chair: No, that's the working paper. You should also have the revised summary of recommendations.

Mr Marchese: Page 16 or 17? Mr Kaye: Pages 12, 13 and 17.

The Ombudsman submitted that this proposed amendment to the standing orders, that the committee monitor and review the Ombudsman's exercise of his or her functions, was not acceptable. The phrase "monitor and review" represented a direct challenge to the independence of the Ombudsman institution and was one of two themes where the Ombudsman had a fundamental disagreement with the approach of the committee's recommendations, the other theme or category of fundamental disagreement being the committee's role in the estimates process, which I'll be discussing next.

According to the Ombudsman, the phrase "monitor and review" provided an open-ended mandate which might be interpreted to include wide-ranging powers of control.

**Mr Marchese:** Sorry, what page is that again? **Mr Kaye:** Page 12, recommendation 16.

The Ombudsman continued that independence was a basic tenet of the role of an Ombudsman. By changing the relationship between the Ombudsman and the committee in the way contemplated, the committee would become a board of directors and the Ombudsman, in

effect, its employee. In such circumstances the Ombudsman felt that the public would lose confidence in the credibility of the institution.

Concerns about independence were also raised in the submission from the seven provincial ombudsmen. David Warner, the Speaker during the last Parliament, said that recommendation 16, and this would apply to 25 as well, represented the most serious of intrusions into the daily operation of the Ombudsman's office. If adopted, at a minimum, there would be an appearance of political interference with an office which was supposed to be impartial; at worst, the credibility of the office would be destroyed. He later said it cannot be stated strongly enough how much danger lay in this recommendation. The recommendation ran the serious risk of destroying public confidence in the office and ultimately its practical functioning. The conclusion was that the recommendation had to be rejected.

Concerns were also raised by the chair of the Workers' Compensation Appeals Tribunal, who remarked that if there was a proposal that his tribunal's exercise of its functions be subject to being monitored and reviewed by either the Ministry of Labour or the Workers' Compensation Board, such a proposal would be seen as being entirely incompatible with WCAT's independence by the chair and by the tribunal's worker and employer constituencies. Mr Ellis continued, "The perception concerning the impact of recommendation 16 on the independence of the Ombudsman was not likely to be significantly different."

1020

The Union of Injured Workers in the context of supporting recommendation 44, which laid out a consolidated set of terms of reference for the committee, supported recommendation 16.

The second issue of concern that I will be reviewing has to do with the process for reviewing the Ombudsman's estimates. The key—

**Mr Marchese:** Sorry, Philip. The Union of Injured Workers says the committee's recommendation is supported?

Mr Kaye: Yes. They didn't go into detail on recommendation 16, they made a comment that recommendation 44 provides consolidated terms of reference for the Ombudsman committee. It takes previous recommendations and incorporates them. Recommendation 44 is reproduced on pages 155 and 156 of the 1993 report.

As I mentioned, it provides for consolidated terms of reference for the committee to go into the standing orders. One of those terms at the top of 156 is, "to monitor and review the Ombudsman's exercise of his or her functions, and in particular: to enquire into and report on any matter which the committee believes should be brought to the attention of the Assembly; and to recommend any changes the committee considers desirable to the Ombudsman Act." The Union of Injured Workers expressed support for recommendation 44 and, by doing so, they were expressing support for recommendations 16 and 25.

With respect to the process for reviewing the estimates for the Ombudsman's office, there's nothing in the Ombudsman Act on how those estimates are to be reviewed. What happens in practice is that the Board of Internal Economy reviews the estimates and then sends them to the Minister of Finance for inclusion in the government estimates tabled in the Legislature.

The standing orders say that after tabling in the House, the estimates of all ministries and offices are deemed to be referred to the estimates committee. That committee, however, doesn't have the authority to examine all the estimates. It must consider at least six, but not more than 12. The estimates it doesn't consider are deemed to be passed by the committee.

The Ombudsman's estimates have never been selected by the estimates committee. This procedure for the review of estimates began in 1989. There were amendments to the standing orders. Between 1983 and 1989 the Ombudsman committee reviewed the Ombudsman's estimates.

In the 1993 report the committee made two recommendations regarding estimates. They are recommendations 23 and 24. They appear on page 152 of the 1993 report. Recommendation 23 basically says that the Ombudsman's estimates should no longer be referred to the estimates committee but instead should be referred to the Ombudsman committee. Recommendation 24 provides that the Ombudsman should present the estimates directly to the Ombudsman committee, in which case the role of the Board of Internal Economy would be removed.

**Mr McLean:** What is the recommendation on that report?

Mr Kaye: That's the recommendation in the 1993 report. Just in terms of explaining the committee's rationale back in 1993, it observed that in practice government dominance of the Board of Internal Economy did not appear to interfere with the independence with which the Ombudsman's budget was approved. However, it thought this non-interference was achieved at some cost. In particular, the committee felt the board was in a difficult position with respect to effectively analysing the Ombudsman's estimates because of the composition of the board, consisting of the Speaker, three members of cabinet and one member from each caucus, and also, the potential for any detailed estimates review to be perceived as an attempt to direct the Ombudsman's activities.

The committee felt that a procedure whereby the estimates would be referred to the Ombudsman committee would ensure that the estimates were regularly considered. As I mentioned, the standing committee on estimates has never looked at the Ombudsman's estimates.

The committee, back in 1993, also thought that having the estimates referred to this committee would address the need to have a review mechanism which was visibly separate from government. As I mentioned, the committee also recommended that consideration should be given to referring the estimates directly to this committee and to bypass the Board of Internal Economy entirely. The committee concluded that direct referral of the estimates to the Ombudsman committee would remove any government overtones associated with the board's review and the possibility for conflict between the Ombudsman and the board. As well, it would allow the Ombudsman to answer for his or her estimates to just one body: the Ombudsman committee.

Submissions on this issue are reviewed on page 16 of the revised summary. The Ombudsman's comments appear at the top of the page. She felt that this area represented the second category or theme in which she had a basic disagreement with the committee's approach. The Ombudsman contended that the separation of her office's funding from the standing committee's consideration of cases was critical to the independent operation of the office. She highlighted section 10 of the Ombudsman Act, which requires an annual audit by the Provincial Auditor, and said that it was entirely appropriate that the Ombudsman be held accountable for funds received. But it was also necessary to structure this accountability in a way that demonstrated the Ombudsman was not a civil servant and was not a part of the government bureaucracy that reported to cabinet. The relationship which her office had with the Board of Internal Economy achieved this, she said, and treated the Ombudsman in the same way and for the same reasons as the other officers of the Legislature.

The Ombudsman referred to a remark by former Ombudsman Donald Morand who said that if the Ombudsman committee had the power to control the expenses of the Ombudsman, it had the power to call the tune of the Ombudsman. This was contrary, she continues, to what was intended when the act was passed.

The seven provincial ombudsmen, which would include the public protector for Quebec, also raised concerns about the committee's recommendation regarding the change to the estimates process. The Union of Injured Workers in the context of supporting recommendation 44, the consolidated terms of reference for this committee, felt that the standing orders should be amended to provide that the Ombudsman committee should review the Ombudsman's estimates.

Mr Marchese: Philip, there's a question. Would not the Board of Internal Economy play that same role as well?

Mr Kaye: It depends which recommendation of the committee is adopted.

Mr Marchese: The one we're just dealing with, where the Ombudsman says the committee should neither be nor perceive to be directing the office of the Ombudsman. But if the Board of Internal Economy were to play this role in obviously reviewing the estimates, would it not be doing the same thing as the committee would be doing?

Mr Kaye: The Ombudsman's view, though, is that the board, because it's chaired by the Speaker, has an impartiality which this committee does not have and that because the board reviews the estimates for the other officers of the assembly, it's logical that her estimates be—

Mr Marchese: And the fact that we have three political parties in this committee, does that not make it a bit more neutral as well, rather than government — the Speaker controls that in terms of a neutral body, yes, but the government members control that committee.

Mr Kaye: I can only say the Ombudsman focuses on the fact that the Speaker is the chair of the board in terms of distinguishing between the makeup of the board and —

The Vice-Chair: I'd like to suggest that we might wait till the end of each section. Are there seven?

Mr Kaye: Yes.

The Vice-Chair: And at the end of each section we'll have a little O and A.

Mr Kaye: The next section, in terms of a contentious issue, involves the rule-making process. The key recommendations are recommendations 27 and 28; 27 was revised in the working paper and the revision appears on page 3. It says the Ombudsman Act should be amended to provide that the assembly's rule-making power shall be exercised through the standing committee on the Ombudsman, which shall give the Ombudsman reasonable notice of its intention to make rules and shall invite the Ombudsman, and other interested parties, to make representations concerning any proposed rules.

Recommendation 28 was not revised. It is reproduced at the top of page 153 in the 1993 report and reads, "That the committee undertake an examination of areas in which rules should be formulated, and that this review be

commenced at the earliest possible time."

The Ombudsman Act empowers the assembly to make, "general rules for the guidance of the Ombudsman in the exercise of his or her functions." In the standing orders, the assembly has delegated to the Ombudsman committee the responsibility for formulating these rules. Procedurally, rules are proposed by the Ombudsman committee and then presented to the assembly for adoption.

Back in November 1979, general rules were adopted by the assembly, but since that date no further rules have been made. Among other matters, the rules set a time frame for the tabling of the Ombudsman's annual report, explain the term "adverse report" and clarify the procedure for the reporting of what are known as recommendation-denied cases by the Ombudsman to the Legislature; that the matter would be referred first to the Premier and thereafter, if necessary, to the Legislature and then to the committee.

The 1993 report spent a fair bit of time on the rule-making process. In that report, the committee acknowledged that no rules had been made since 1979. However, the committee considered the situation to be more a reflection of the expectation that amendments to the Ombudsman Act would be forthcoming than any belief on the committee's part that no more rules were needed.

The committee remarked that rules could help to clarify areas of apparent conflict between the Ombudsman and governmental organizations. They could also foster consistency in the office's procedures as new

Ombudsmen were appointed.

As I mentioned, the committee, in the working paper from last year, proposed a revision to recommendation 27 regarding the making of rules. As noted on page 3 of the working paper, the committee simply changed the word "permit" to "invite," so that the end of recommendation 27 made reference to inviting the Ombudsman to make representations. The committee explained that the word "invite" denoted more accurately than "permit" that the committee wished to actively seek the Ombudsman's participation in the rule-making process.

In the summary, comments on recommendations 27 and 28 appear on pages 18 and 19. The Ombudsman said

that rules were generally not helpful because they tended to limit the Ombudsman's role and diminish the degree of flexibility to address issues in changing circumstances. Also, rules made by a standing committee with a government majority could make it very difficult for the Ombudsman to defend the integrity of the office's decisions. If the Legislature found that restrictions on the Ombudsman's exercise of his or her functions were necessary, then amendments could be made to the Ombudsman Act.

She continued that if rules were to be considered, a process and guideline should be established about how the need for a rule would be identified, what information should be considered and how this information should be obtained. It should also be established, she said, that rules are generally made to empower the Ombudsman to effectively perform the functions of the office, not to limit the office's role.

The Union of Injured Workers supported the revision made by the committee in the working paper, saying that the word "permit" in the original recommendation was condescending and should be replaced with the word "invite," as suggested in the revision. The revision was also supported by the Ministry of the Solicitor General and Correctional Services.

A subcategory of the topic of the making of rules deals with rules pertaining to systemic investigations. The key recommendation is recommendation 1, which appears at the back of the 1993 report on page 148, and says, "That the committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of a systemic nature."

In the 1993 report, the committee believed that the Ombudsman had an important role to play in identifying systemic problems. However, it felt that the primary function of the Ombudsman should continue to be the investigation of individual complaints. According to the committee, care had to be taken to ensure that the conduct of systemic investigations did not detract from this primary function. The committee, in 1993, noted that to a large extent the procedures set out in the Ombudsman Act were designed to facilitate the investigation of individual complaints. Accordingly, the committee made recommendation 1.

Comments received during the committee's hearings on recommendation 1 appear in the summary on pages 1 and 2. The Ombudsman opposed the recommendation, claiming that there was no need for a rule to govern the conduct of systemic investigations. An unnecessary rule might fail to anticipate future circumstances which could limit the scope of the Ombudsman's response to complaints. The Ombudsman, however, welcomed the opportunity to discuss with the committee her current approach to systemic investigations and to entertain any suggestions for improvement.

Mr Marchese: I'm sorry, Philip, I need some clarification here. The issue was whether there should be systemic

reviews?

Mr Kaye: The issue was whether there should be rules to govern systemic reviews; not whether there should be systemic reviews, but just whether there was a need to have rules. The Ombudsman, as I said, felt there was no need for any rule.

Ron Ellis, the chair of the Workers' Compensation Appeals Tribunal, took a different approach before the committee. His views are summarized on page 2 of the summary. He submitted that for a small tribunal, the intervention of the Ombudsman's office in the tribunal's policymaking process could be very powerful and intrusive. The Ombudsman had the power to report to the Premier and to the Legislature as well as the power to initiate a full-scale organizational review. This power imbalance between the Ombudsman and the tribunal called for careful control of the power to engage in systemic investigations.

Another comment he made held that where the systemic investigation was in the nature of a general operational audit or organizational review, it was essential that the tribunal being investigated have specified rights to participate in the development of the review plan. It should also have the right to contribute during the review process itself and the opportunity to respond to the developing report. He concluded that there was a particular need to formulate rules to govern these rights of involvement.

Another issue of contention pertaining to rules deals with the investigation of tribunal decisions. The recommendation here is recommendation 14, which appears in the 1993 report on page 150. Recommendation 14 says, "That the committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of tribunal decisions."

In the 1993 report, in terms of explaining the rationale for this recommendation, the committee referred to what was known as the Macaulay report. In 1988 Robert Macaulay, the former chair of the Ontario Energy Board, was appointed by Management Board of Cabinet to carry out an extensive review of all regulatory agencies, boards and commissions of the government of Ontario. He reported back to Management Board the following year. In his report he referred to an unhealthy and considerable tension which had developed between the Ombudsman's office and some agencies.

To quote from his report, "In my conversations with a few of the agencies and with staff of the Office of the Ombudsman I discovered unhealthy tension between the two which in the interests of the province should be understood and eased." Later on he said: "As I advanced my work, it became apparent that some agencies have had an ongoing relationship with the Office of the Ombudsman but some more than others were concerned about the investigations and the demands put upon some of them by the Office of the Ombudsman. These demands have created considerable tension. This matter should be reviewed." Macaulay recommended that the Ombudsman committee should establish rules of procedure which would govern how the Ombudsman's powers are carried out with respect to agencies.

In the summary, the submissions on the committee's recommendation in this area are summarized on pages 9 and 11. In the middle of page 9: The Ombudsman said

that this proposal was one area where the Ombudsman had a fundamental disagreement with the committee. The Ombudsman's office had a well-established approach to dealing with complaints about tribunal decisions. The primary purpose was to see that the process followed by a tribunal was administratively fair. The purpose was not to sit as a court of appeal where the Ombudsman's findings would be substituted for that of the tribunal. She continued, that where procedural or administrative unfairness were found, the Ombudsman might recommend reconsideration of a decision if the tribunal had such authority, or a change to the tribunal's procedures governing the decision-making process; for example, where the issue of delay had arisen. She concluded that there was no need for a rule to set this out.

Ron Ellis, from the Workers' Compensation Appeals Tribunal — I should emphasize that when Mr Ellis testified, and this is noted at the back of the summary, he said that he was speaking personally and not on behalf of the tribunal — felt that the experience of his tribunal with the Ombudsman had been excellent and that the working relationship had been first-class. The Ombudsman did not try to substitute her judgement for that of the tribunal, but rather looked at whether the tribunal had acted reasonably. From a practical point of view, given the limitations that the Ombudsman had accepted, the Ombudsman's process had proven to be positive and useful. It served as a kind of ongoing audit from an objective and outside point of view.

Further comments by Mr Ellis appear at the top of page 11 of the summary, where I have summarized his view that the Ombudsman's traditional role is to investigate a governmental decision upon the complaint of a private citizen where private citizens are not competing against each other. However, in its investigation of tribunal decisions, the Ombudsman was dealing with decisions involving the rights of competing private citizens. This peculiar problem had not received sufficient attention. In particular, there was the issue of the rights of the non-complaining party, who is not the government, to participate in the Ombudsman's investigation.

The fourth issue to review has to do with the making of public comments by the Ombudsman. This issue is addressed in recommendation 7, which was revised in the working paper. Recommendation 7 appears at the bottom of page 1 and authorizes the Ombudsman to comment publicly, where it is considered to be in the public interest or in the interests of any person or governmental organization, in order to make known the existence of an investigation or the outcome of a particular case.

Back in 1993, the committee concluded that the Ombudsman should have the power to comment publicly in certain situations. For instance, in explaining why this power would be desirable, the committee commented that it would be useful to exonerate individuals or governmental organizations which had been the subject of public allegations later found to be without basis. Although the Ombudsman's reports would eventually clarify concerns, a more timely public statement would in some instances be more effective.

The working paper, as I mentioned, revised the recommendation and added the words "by means of a

special report to the assembly" to explain how the Ombudsman would have to comment publicly. The rationale for this change is explained at the top of page 2. The committee was concerned that the original recommendation permitted the Ombudsman to resort to the media to make such comments. The potential emotional overtones of media involvement can make it difficult for the Ombudsman to maintain the principles as well as the perception of being independent and impartial.

Submissions to the committee on this issue appear on pages 5 and 6 of the summary. The Ombudsman had concerns about the drafting of the recommendation, but not the principle, and wished the recommendation to go further. Her comments are reproduced on the middle of the page. But the revision the committee made in the working paper, adding the words "by means of a special report to the assembly," was specifically opposed by the Union of Injured Workers, the public protector and the Ministry of the Solicitor General and Correctional Services.

The fifth issue has to do with the appointment of the Ombudsman. The key recommendation is recommendation 20. It is revised in the working paper and appears on page 2 of the working paper. In terms of the appointment of the Ombudsman, this recommendation says the Ombudsman Act should "be amended to provide that the Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the assembly" —

Mr Parker: Excuse me. That part we've got in front of us. I wonder if you could go straight to a summary of the submissions that were made, just a brief summary of the points, pro and con, in each case.

1050

Mr Kaye: Sure. The summary deals with the comments on this issue on pages 14 and 15. The Ombudsman favoured an appointment process which involved representation of all parties. The kind of committee she envisioned would be chaired by the Speaker with equal representation from all parties and any appointment could require the support of at least one member from each party recognized in the House who sat on the committee.

The Union of Injured Workers supported the committee's revision to the appointment process. The Ministry of the Solicitor General and Correctional Services supported the committee's revision. The Public Protector from Quebec made reference to unanimity being the best way for the assembly to express its confidence in an appointee but that, as a general rule, it might be unrealistic to expect unanimity and that a majority vote of two thirds would be adequate.

The next issue of the seven — this is issue number 6 — has to do with complaints from the public regarding investigations by the Ombudsman. I will just highlight what was said during the hearings on that issue. The recommendation in this area is recommendation 34. It was revised in the working paper and members can refer to it on page 4 of the working paper. The committee added the words, "for the purpose solely of assisting the committee in the formulation of rules for the guidance of

the Ombudsman."

Comments received during the hearings appear on pages 20 and 21 of the summary. Here witnesses differed

about this recommendation. The Ombudsman said that, if implemented, recommendation 34 would reduce the cooperation which the Ombudsman received from governmental organizations and other parties relying on the Ombudsman's duty to maintain confidentiality. The Union of Injured Workers and the Ministry of the Solicitor General and Correctional Services supported the committee's revision.

The final issue I wish to review deals with the composition of this committee. The key recommendation is recommendation 42. It was revised quite extensively in the working paper, as the committee recommended that recommendation 42 should be deleted. Recommendation 42 had contained a provision to change the membership of this committee so that it would consist of an equal number of government members and opposition members combined, with the chair being a government member.

The rationale for the committee rejecting this recommendation in the working paper appears at the bottom of page 4 and at the top of page 5. Comments on this issue are summarized on pages 23 and 24 of the revised summary. The Ombudsman here referred as well to the concept of a committee at the Legislature made up of the Speaker and an equal number of representatives from each party that could play a useful role in Ombudsman matters.

She also said it might be worth considering a return to the situation where the Legislature would deal with Ombudsman issues on an as-needed basis through a select committee rather than through a standing committee. A select committee would be convened to deal with Ombudsman reports and other matters as appropriate.

Other suggestions made to the committee in terms of its composition also appear on page 24 from David Warner, Speaker during the last Parliament, and again, references to the views of the Ministry of the Solicitor General and the Union of Injured Workers.

Mr Bruce Crozier (Essex South): Would it be reasonable to assume that the Ombudsman, in referring to a select committee, would think that select committee should take the same form as her previous comments? There was nothing said about the makeup of the select committee, so I assume she then would still agree that it should be made up of a Speaker and an equal number of representatives.

Mr Kaye: I don't think she was explicit on that, but you could argue it's implied.

Mr Crozier: I just wanted to get it on the record that's what I feel would be implied.

Mr Kaye: That completes my review of seven areas of contention. There are other areas which members may wish to look at which are contained in the summary, but just to recap: The two issues which the Ombudsman here and other ombudsmen opposed the most vigorously were the recommendation that this committee's mandate be amended to give it the explicit authority to monitor and review the exercise of her office's functions; and second, that her estimates come to this committee.

As I said, there were two recommendations in this regard: one being that the estimates would still go to the Board of Internal Economy, as they do now, but instead of being referred to the estimates committee, where

they've never been looked at, be referred to this committee; and then the second recommendation being that the estimates, instead of going to the Board of Internal Economy before this committee, not go to the Board of Internal Economy at all, but come directly to this committee.

The committee said that if you adopt that recommendation, then you don't need the first one, where there's a role for the board. But those were the two issues in particular where the Ombudsman here and other ombudsmen expressed fundamental disagreement with what this committee was proposing.

I guess the third area of fundamental disagreement would have to do with the making of rules regarding the

investigation of tribunal decisions.

The Vice-Chair: Thank you, Philip. Any questions or comments?

Mr Parker: My friend Mr Leadston wants Philip to review the recommendations from the top once again, all the way through, just to make sure he didn't miss any of the essential details.

Mr Kaye: Let's just say there are 44 recommendations in the 1993 report and I highlighted a select number, but they tend to be fairly technical and that may explain why it takes the time it does to review them.

Mr Parker: I think we've now reviewed the 1993 report. We have considered it and made a number of revisions to some of the recommendations. Those revisions have now been the subject of some public consultation. That consultation took place last winter. Philip has now reviewed with us the results of that consultative process. I think it now falls to this committee to move ahead on the matter and decide what it intends to do.

We can discuss that now or we can put that matter over to another day. Frankly, looking at the clock, I'm inclined to recommend that we put it over to another day, but I think we're at the stage where that's the next step for us to take.

Mr McLean: I guess it gives us some time to review the last three key recommendations that he's made. They need to be reviewed because I certainly have some serious considerations with regard to some of the comments. I think putting it over to another day will give us the opportunity to review that.

Mr Marchese: I agree with Mr Parker's comments. I think it is also useful to put these recommendations to be dealt with on another day in order to give some of the members some time to talk to each other as a caucus, I presume, about them so that if they have concerns, then we don't have to have a great deal of debate on some of them, so they can be sorted out.

There has been largely a great deal of agreement with our caucuses on most of these recommendations, but I think it is worthwhile having another week to review these recommendations and then come and deal with each one of them, with each recommendation, approve or make other amendments if we need to.

The Vice-Chair: Do we have agreement on that?

Interjections: Agreed.

The Vice-Chair: Would anyone like to propose a date, next week or two weeks?

Mr Marchese: Next week would be fine.

Mr Parker: I suggest we reconvene at the call of the Chair and aim for next week, but leave it to the Chair to confirm that.

Mr Crozier: Mr Chair, only to point out that when it's at the call of the Chair it's a little difficult to schedule meetings and so forth here. If it's on my schedule, it's there, is I guess what I'm saying.

Mr Parker: I reserve every Wednesday morning for

the Ombudsman, Bruce.

Mr Crozier: Do you?

The Vice-Chair: I'm not sure when the Chair himself will be available, but I would propose now that we do it for the 11th. How's that? That's two weeks. Is that okay?

Mr Marchese: I have a recommendation. I actually believe that the further we put this matter off, the more the opportunity for people not to read this report, so I would recommend that we meet in fact next week to deal with it to give people a fresh sense of these issues that were dealt with today and force the members to review them for next Wednesday. If we put it off, I suspect we'll not be prepared adequately to deal with it.

The Vice-Chair: A very good point, but is it the consensus of the committee that we try and have the orientation meeting before that also, or does it matter? There was a move to have an orientation for the rookie

members, if you will.

Mr Marchese: I think it should be organized before the next meeting, because a lot of the questions that arise tend to affect the decisions we make here. I'm not sure you need two weeks to do that, necessarily, but rather a quick three quarters of an hour.

The Vice-Chair: But if we're going to meet next Wednesday, we're going to be restricted in terms of

having the orientation prior to that.

Mr Marchese: I appreciate that.

Mr Parker: I wouldn't recommend letting that get in our way. If there's a strong sense that we should get on with things, then I'll support that.

The Vice-Chair: Do we have agreement, then, that we can proceed next Wednesday? Agreed? Good.

Mr Crozier: Since I'm a rookie, what the devil is an orientation meeting? I thought we learned these things on the job.

The Vice-Chair: It was mentioned earlier, I'm not sure by whom — someone suggested that —

Interjection.

The Vice-Chair: Yes. You don't have to go, but the option will be there.

Mr Crozier: What do you do?

The Vice-Chair: I guess the clerk is just going to try and explain the who does what, if you will, of this committee.

Mr Crozier: Oh no, we've already had one of those. We don't want that.

The Vice-Chair: Something along those lines. Attendance will not be mandatory, how's that?

Mr R. Gary Stewart (Peterborough): You'll learn how little accountability this committee has in the Ombudsman's department.

The Vice-Chair: We had a subcommittee meeting this morning and I think Mr Parker would like to speak to the issue that came up.

Mr Parker: We're into other business, are we?

The Vice-Chair: Yes.

Mr Parker: A letter has been received by the members of the committee. I certainly got a copy of it. I believe all members of the committee were copied on the letter. It says certain things. One comment in the letter suggests that the writer of the letter was a citizen who called upon the services of the Ombudsman and dealt with the Ombudsman's office over some period of time, including telephone conversations. At some point along the way, this person came to believe that his telephone conversations were being recorded by the Ombudsman's office. This apparently had been going on without his knowledge and he was concerned upon coming to the

belief that this had been going on and that it had been going on without his consent or permission. This was the thrust of the letter that came before us.

I frankly take no view on the matter but I think it raises a question that is fair for us to pursue. In view of that allegation, I would like to move that the Chair of this committee be instructed to address a letter to the Ombudsman asking her to comment on that allegation.

The Vice-Chair: Questions or comments? No. All in favour? Carried.

There being no further business, we will adjourn until 10 o'clock on June 4.

The committee adjourned at 1105.

#### **CONTENTS**

#### Wednesday 28 May 1997

	mbudsman		
STANDING COMMITTEE ON THE OMBUDSMAN			
	Mr John O'Toole (Durham East / -Est PC)		
vice-Chair / vice-President:	Mr Trevor Pettit (Hamilton Mountain PC) Mr DaveBoushy (Sarnia PC)		
Mr Dave	Boushy (Sarnia PC)		
	Crozier (Essex South / -Sud L)		
	Hoy (Essex-Kent L)		
Mr Ron	Johnson (Brantford PC)		
Mr Jean-Marc	Lalonde (Prescott and Russell / Prescott et Russell L)		
Mr Gary L.	Leadston (Kitchener-Wilmot PC)		
Mr Rosario	Marchese (Fort York ND)		
Mr Allan K.	McLean (Simcoe East / -Est PC)		
Mr Bill	Murdoch (Grey-Owen Sound PC)		
Mr John R.	O'Toole (Durham East / -Est PC)		
Mr Jerry J.	Ouellette (Oshawa PC)		
Mr John L.	Parker (York East / -Est PC)		
Mr Trevor	Pettit (Hamilton Mountain PC)		
Mr Len	Wood (Cochrane North / -Nord ND)		
*In attendance /	présents		
Substitutions present /	Membres remplaçants présents:		
Mr R. Gary	Stewart (Peterborough PC)		

Clerk / Greffier: Mr Franco Carrozza

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# Legislative Assembly of Ontario

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# Official Report of Debates (Hansard)

Wednesday 4 June 1997

Standing committee on the Ombudsman

Review of the Office of the Ombudsman

# Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 4 juin 1997

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman



Chair: John R. O'Toole Clerk: Franco Carrozza Président : John R. O'Toole Greffier : Franco Carrozza

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 4 June 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 4 juin 1997

The committee met at 1016 in room 151.

### REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John O'Toole): I call the meeting to order. The clerk has made every effort to contact those persons who are members of this committee. I gather it's been the expression of the committee that we would like or prefer to have representation from all three parties to proceed with our disposition of the 1993 report.

Are there any comments from the Liberal side before

we formally get started? Yes, Mr Hoy.

Mr Pat Hoy (Essex-Kent): I will make a brief comment. I think it has been some time since we got to this date where we would be reviewing this particular report. We've had submissions made over a rather extended period of time, both from the Ombudsman and others, and they were all very valuable to us.

I think it's important to remember that the Ombudsman currently is a last resort for the people of Ontario who have complaints against the government. It is my understanding the report of 1993 was never tabled. Also, I would mention that I think there are only four of the signatories to that report in the Legislature today, which

is quite an interesting point.

As well, the committee membership has changed over time. I am looking back at a document I was given back in March 1996 with regard to these reports. There was discussion at that time about certain revisions. I think, from at least two parties, a great number of people on the committee have changed in role, for whatever reason there might be. So I think we'll have to be somewhat cautious about this as we approach it with the new membership that we have here.

The submissions made to the committee were very helpful. I think they give us ample direction and I think they will give us some cause for some discussion — not lengthy, but I think we should give the review, for our part, some chance for questions and debate, but not to the

extent that it would be prohibitive.

The Chair: Very good. Just one point of clarification: The clerk has pointed out quite capably and quite correctly that the Ombudsman's committee did table the report with the Legislature. The report was never adopted, and it subsequently was referred back to the committee. That's where this new government and this new committee, which has had a variety of membership, have gone through a very labour-intensive, detailed workthrough of every one of the 44 recommendations.

We have before us this morning the report — I gather everyone has a copy of that report — as well as a copy

of the working paper. The working paper outlines nine of the recommendations, which were revised after the hearing process, after the 1993 report was reviewed the second time. Is that not right? The researcher for the committee could perhaps bring us up to date to know exactly where we are.

There has been a comprehensive review of the original report — this report — and from it, the committee, which has changed membership, has come up with a working paper with some revised amendments — the same amendments but revised, if I'm correct, Philip.

Mr Philip Kaye: That's correct. The committee, in the working paper, proposed revisions to nine of the recommendations. There weren't public hearings prior to the working paper being drafted, and then the public hearings were conducted last fall on both the working paper and the 1993 report.

The Chair: With that kind of background, we are at page 59, recommendation 18, I believe, in the full report. In the working paper I'm not sure exactly where we are, but there were revisions to 20, so we must be still on 18. Is that what we're doing, reviewing each one of the recommendations?

Mr Kaye: Last week I highlighted the areas of contention that had arisen during the hearings, and in giving that overview I was intending to review the entire submissions.

The Chair: The clerk has recommended, and I would ask the committee to adopt this, that we stick with this report, the working paper, and review each one of those revised recommendations. If we focus on this, if we can get the acceptance of those, I think we'd make some progress this morning. In that respect we're on page 1, "Public Comment by Ombudsman on Investigation," and the revised recommendation we have before us, revision 7.

Mr Trevor Pettit (Hamilton Mountain): Chair, I'm not clear on that. We had reached a certain point last week when Mr Kaye was doing his review. Are you suggesting we just continue from where we were last week?

The Chair: That's kind of what I'm suggesting.

Mr Pettit: Is that the idea?

Mr Kaye: I finished my review in terms of highlighting the most contentious issues that have been raised during the hearings. Considering that the hearings were both on the 1993 report and on the working paper, I'm not sure which approach the committee might wish to follow in terms of whether to begin with the working paper or the most contentious issues that arose during the hearings.

The Chair: Isn't the working paper the most conten-

tious issues?

Mr Kaye: Not in terms of the submissions that came out during the hearings.

The Chair: But they were included in it?

Mr Kaye: Yes. The submissions did refer to the working paper, but they also refer to the 1993 report. The most contentious issues were not addressed in the working paper but in the 1993 report. The most contentious issues were, first of all, that the committee's mandate be expanded to include a role to monitor and review the exercise of the Ombudsman's functions and, secondly, that the Ombudsman's estimates be referred to this committee after they had gone to the Board of Internal Economy or that they be referred directly to the committee and not go to the Board of Internal Economy at all.

The Chair: At this point in time, I'll put it open to the committee to make comment as to which way they'd

prefer to proceed.

Mr John L. Parker (York East): I think we should not prejudge what may or may not be controversial. That will emerge in our own discussion. What is controversial to others out there may not be controversial to members of this committee and vice versa. I would suggest that we just go through the 1993 report in order and raise each of the recommendations in the order in which they appear and see what discussion arises. We may find that some of them go quickly; we may find that some of them give rise to some discussion, but we won't know until we get into it.

Bearing in mind that some of the recommendations in the 1993 report have already been revised in a provisional manner by this committee in earlier sittings, about a year ago, and that those revisions appear in the working paper, so when we come to those provisions, we'll want to have both documents in front of us, together with the transcript of the submissions that were made in the most recent public hearings. I'd start with number one and just go through, starting with the first recommendation in the 1993 report.

The Chair: I hope we're not repeating. I think perhaps it would be wise if we did start at number 1 and perhaps

it would be as quick to go through.

Mr Hoy: I would agree. We have discussed over a long period of time all of these recommendations and in some cases we have discussed at length certain recommendations, but we have not adopted any of the recommendations. We have looked at them and in some cases from time to time we have discussed them and maybe questioned such people as the Ombudsman and others who appeared before the committee about certain ones. I would agree with Mr Parker that we go through them one by one. I think he's looking for adoption of this report so that we can present it when our work is done.

The Chair: The researcher has just pointed out to me that on March 19, 1997, there was a report issued by the counsel and research officer: Revised Summary of Recommendations re Submissions on the Ombudsman Committee Report "Review of the Office of the Ombudsman" and Related Working Paper. Do members of the committee have this report with them? Again, it's March 19, 1997, and it was given to you last week.

Mr Parker: Yes, I've got it.

The Chair: Let's just check to make sure here that I have it. I tried to get together all of the pieces of this committee.

My thinking is, we should be sure that we're reviewing to the original report because if there are revisions, we should refer the revisions back to the original report. To be clear, the report is going to be tabled again, it's my understanding.

**Mr Parker:** If that's the wish of the committee, that's fine.

The Chair: That's kind of where we'd like to get to, in a revised format. So we'll stick to the original report, having this as a reference document with us. Very good.

We have before us recommendation 1: "That the committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of a systemic nature."

Any comments on recommendation 1?

Mr Parker: Some comments were registered by various deponents in respect of this recommendation. The Ombudsman commented, the Ombudsman for Quebec commented and two other deponents before the committee commented. However, I see the first recommendation as general in nature, opening the door for potential future discussion but not really having an immediate effect other than that. By this I mean that recommendation 1 is merely a recommendation that a further review be conducted into this one question, but it doesn't purport to answer that question.

I see recommendation 1 as harmless in its present form. I appreciate the submissions that have been made in respect of the first submission, but I think we are safe in adopting the first submission and leaving our minds open as to what to do with it down the road. The submissions that have been made before us already will be useful in that future investigation. I don't see any reason not to adopt recommendation 1 and leave it to a future day to determine what to do about it, whether we want to pursue it or whether we're happy with things as they are.

Mr Hoy: I appreciate the comments previously made. In March 1996, we were given this particular recommendation and a draft revision. I note that the draft revision does not appear in the working paper as one of those items of concern.

At the time, I discussed with Mr Galt at the subcommittee level that we in our party had a problem with this particular recommendation. We are going back quite some time, I appreciate. This is March 1996 I'm talking about, so memories may have to be brought forward quite a bit, and the fact that Mr Galt is not here now is also of concern. But we do have a problem with this particular recommendation. I suppose at the time it also entailed the draft revision, that this particular recommendation that shows in the 1993 report be revised.

To be clear, you are talking about the 1993 and not the draft revision that I was given in March 1996?

Mr Parker: That's correct, but that's only because I'm not — I hate to say "not aware of the most recent revision," but it has skipped my mind and I don't have it in front of me. I'm open to your recommendation as to how it might be amended.

Mr Hoy: If I might speak further then, if we are only talking about the recommendation number 1 that appears in the 1993 report, I think it does say "whether there is a need to formulate rules." So perhaps with that statement, I could agree with Mr Parker that it is basically harmless and would be more effective by a recommendation that appears in the report later. It does say "whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of a systemic nature." I quite agree with you that later in the report we'll have to decide whether that need is there. So if we are talking about as it appeared in the 1993 and not the draft revision, I would support your contention.

The Chair: I guess that's the first recommendation. At this time, all three parties aren't here. It would appear that we would like to postpone any further discussion on recommendation number 1. I would ask the committee —

Mr Parker: I will just add this further comment. Pat, I now remember what you're talking about, yes. I wasn't present at that time. That's why it's taking a while for the penny to drop, but I remember when that discussion was initially held, our caucus put forward a recommendation. That recommendation has been withdrawn and we're happy with item 1 as it appears in the 1993 report. We're not going to let a little thing like that come between friends.

The Chair: For the other members of the committee, I think it's important to know that Mr Hoy has some continuity with this committee, as does Mr Parker, the former Chair of the committee. So those of us who are new to this are somewhat missing in this discussion.

Mr Parker: Not at all.

Clerk of the Committee (Mr Franco Carrozza): The institutional members.

The Chair: Yes, the institutional members are more informed.

Mr Hoy: If we are going to discuss these recommendations, as we have already have started, then are we now saying that we will wait for representation from others before we make a decision?

Mr Parker: Let me say that I'm not comfortable proceeding with a final decision in the absence of the third party.

Mr Hoy: I wonder, Mr Chair, if we couldn't perhaps have a five-minute recess, or three minutes.

The Chair: Is this a formal request for a recess? Do I have consent for a recess for five minutes?

Mr Parker: I give consent for a recess.

The Chair: This committee stands recessed for five minutes.

The committee recessed from 1035 to 1037.

The Chair: We reconvene this meeting. I have unanimous consent.

Mr Parker: Mr Chair, I would like to bring a motion. We've had some discussion on the record and frankly some discussion off the record, and it all comes to the same thing, which is that those present would like to have a fuller committee in order to proceed with this matter. The third party is not represented here this morning and we don't feel it's appropriate to get too heavily into the merits of these issues in the absence of the third party.

I bring the motion that we adjourn for today and reconvene at your call to continue the review of the 1993 report at that time.

**The Chair:** We have a motion by Mr Parker. Are there any other comments?

**Mr Hoy:** I would just simply say that I agree with the motion and concur with Mr Parker that we recess until the call of the Chair.

The Chair: Any other comments? If not, I'll call the question.

All those in support? Agreed? Opposed? That's carried. *The committee adjourned at 1038.* 

#### **CONTENTS**

#### Wednesday 4 June 1997

Review of the Office of the Or	mbudsman	B-137		
STANDING COMMITTEE ON THE OMBUDSMAN				
	Mr John O'Toole (Durham East / -Est PC) Mr Trevor Pettit (Hamilton Mountain PC)			
Mr Bruce Mr Pat Mr Ron Mr Jean-Marc Mr Gary L. Mr Rosario Mr Allan K. Mr Bill Mr John R. Mr Jerry J. Mr John L. Mr Trevor	Boushy (Sarnia PC) Crozier (Essex South / -Sud L) Hoy (Essex-Kent L) Johnson (Brantford PC) Lalonde (Prescott and Russell / Prescott et Russell L) Leadston (Kitchener-Wilmot PC) Marchese (Fort York ND) McLean (Simcoe East / -Est PC) Murdoch (Grey-Owen Sound PC) O'Toole (Durham East / -Est PC) Ouellette (Oshawa PC) Parker (York East / -Est PC) Pettit (Hamilton Mountain PC) Wood (Cochrane North / -Nord ND)			
Mr John Mrs Margaret	Membres remplaçants présents: Hastings (Etobicoke-Rexdale PC) Marland (Mississauga South PC)  Mr Franco Carrozza			

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



B-15

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First Session, 36th Parliament

# Assemblée législative de l'Ontario

Première session, 36e législature

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## Standing committee on the Ombudsman

Review of the Office of the Ombudsman



Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman

Chair: John R. O'Toole Clerk: Franco Carrozza Président : John R. O'Toole Greffier : Franco Carrozza

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 11 June 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 11 juin 1997

The committee met at 1008 in room 151.

#### REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John O'Toole): I call the meeting to order. Everyone has an agenda in front of them. We have an item to discuss today or to come to some resolution on, to continue the committee review of the 1993 report of the Office of the Ombudsman. Are there any comments from the committee?

Our clerk has just pointed out that the subcommittee met this morning, and the members of all three parties agreed that it would be appropriate to review the recommendations in the 1993 report one at a time. Does anybody have any objection to that process? This is the report we're dealing with.

Mr Allan K. McLean (Simcoe East): That would be four years ago, wouldn't it? Why are we dealing with the 1993 report?

The Chair: That's a tough question.

Mr Trevor Pettit (Hamilton Mountain): It's a review of the Office of the Ombudsman as opposed to the annual

The Chair: Yes, that's right. It's not an annual report.

I'll ask the clerk how we got to where we are.

Clerk of the Committee (Mr Franco Carrozza): The committee is now in the process of reviewing the recommendations made in 1993 with a view to agreeing, if they wish, or bringing in some new recommendations. When the subcommittee met, they agreed you should look at each recommendation and agree to it or discuss how you wish to improve that recommendation.

Mr John L. Parker (York East): That's fairly put.

The Chair: Fairly put, yes. We have 44 recommendations in this report, a minute per recommendation no. Any other comments?

Mr Rosario Marchese (Fort York): The other matter of the correspondence, is that to be dealt with subsequent to this or now? I would prefer that we deal with it now;

otherwise we won't get to it today.

The Chair: I concur with Mr Marchese. There is another item here called 2, but there was correspondence under the direction of this committee to the Ombudsman. We have subsequently had a response, and the subcommittee discussed that as well this morning. There was some debate between Mr Parker, Mr Marchese and Mr Hoy. If they would like to add comments to what direction to this committee, we are prepared to listen.

Mr Parker: I suggest that you summarize or maybe the clerk can summarize for the committee the nature of that correspondence, and then maybe a discussion will flow naturally from that.

The Chair: I could ask the clerk so that we have it perfectly right sequentially. The committee wrote to the Ombudsman with respect to taping of conversations.

Clerk of the Committee: The subcommittee received a letter from an individual expressing concerns about the Ombudsman's office taping conversations between himself and the investigator. Subsequently the subcommittee met and decided to write to the Ombudsman, requesting from her what the policy was on taping this conversation. The committee received a letter in response from the Ombudsman informing us that yes, there was a policy. The policy was that conversations would be taped once the individual was informed, and the individual must also sign a written form authorizing this taping.

Subsequent to that, the subcommittee has received further correspondence from the same individual stating that the individual had not given permission for the taping of this conversation and expressing great concern about that fact.

The subcommittee met this morning and discussed this issue and wants to bring it to your attention to see in what direction you wish to go on this specific issue.

Mr Jerry J. Ouellette (Oshawa): I'd point out that this is actually a criminal matter, that there is federal legislation that handles the illegal taping of conversations and the use of those conversations in any way, shape or form, and that quite possibly we should be investigating exactly what our obligations are as they relate to the criminal legislation.

The Chair: That's a reasonable point, and I think that point was brought up. I would ask the researcher to indicate — in his early report on this he told us what the rules of taping and non-taping of conversations were.

Mr Philip Kaye: There is a provision in the Criminal Code which creates a general offence stating that the interception of private communications is an offence punishable by imprisonment for up to five years. There are several exceptions, however, one of which applies to, and I quote from the Criminal Code, "a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it."

I spoke to a David Littlefield, who is a crown counsel with the federal Department of Justice and the author of an article on the interception of private communications. He confirmed that as a result of this exception in the Criminal Code, a party to a telephone conversation who tapes the conversation without the knowledge of the other party does not commit an offence under the Criminal Code.

I also asked Mr Littlefield about another provision in the Criminal Code which required the approval of the courts to intercept a private communication even if one of the parties had consented to the interception, and he confirmed that this provision applied only in a law enforcement context.

Mr Ouellette: My understanding, after speaking to police officers regarding this, is that it is what takes place with the information afterwards which becomes the offence, whereby if you use the information in any way, shape or form, then it becomes an offence. The taping is okay even though the individual does not have the authority or the agreement or consent to tape. However, when they utilize that information at a later date, that is when it becomes an offence.

Mr Kaye: My understanding of the Criminal Code is that it doesn't make that kind of distinction, that to tape a conversation where one of the parties does so is not an offence and that regardless of how the individual uses that information, it still is not an offence under the Criminal Code. There's a separate issue as to whether or not civil action could be taken against the person who recorded the conversation for invasion of privacy.

There was a case in the early 1980s. It involved a decision in the Niagara region where the court found an invasion of privacy for the use of a secretly recorded conversation which was recorded by one of the parties and then that tape was played at a council meeting, and after it had been played at a council meeting it was printed in the Niagara Falls Review. The court at that point said, in reference to the claim by the plaintiff who felt he was embarrassed and that his confidence had been betrayed, to quote from the judgement in that case, "Be that as it may, it's my opinion that certainly a person must have the right to make such a claim as a result of a taping of a private conversation without his knowledge and also as against the publication of the conversation against his will or without his consent." I emphasize here that the court also referred to "and...against the publication of the conversation against his will or without his consent."

Then the judgement went on:

"Certainly, for want of a better description as to what happened, this is an invasion of privacy and...the plaintiff must be given some right of recovery for what the defendant has in this case done."

I highlight that this was a civil action for invasion of privacy and the court awarded damages of \$500, but it did not deal with the issue of an offence under the Criminal Code. So it's my understanding that the use of the tape may lead to some kind of civil action, keeping in mind that this decision was of a lower court back in 1981. As for the reasoning of the judgement, there might be some debate as to the significance of not just the taping itself but also the use. But as the question referred to a distinction between taping per se and then using the tape, I think this case is of relevance, but again it only deals with a civil action.

The Chair: Very good. Are there any other comments on the specific background to the taping of conversations? I think we discussed it before. Thank you for your question.

Mr Marchese: I guess there are two issues that flow from this that we should just comment on. First, in the matter raised by the Ombudsman in her letter to you, one of the points is, "In such cases, audiotaping should only take place with the manager's consent and if prior written consent is obtained from the client or other person to be interviewed." It indicates as if consent may have been sought while that telephone conversation happened, but we gather from the correspondence we received from the person complaining that no such consent had been asked.

The problem for me is — we regret there is a contradiction here of information — that I'm not sure how that gets solved. We really don't want to play Ombudsman here in this committee in dealing with this particular problem, but there is a contradiction of information where the individual who was complaining is saying, "No, you didn't ask me," and they're saying, "We did ask him." That's the first point.

1020

The second point is that the Ombudsman says, "I'm also pleased to provide you with the attached copy of 'Ombudsman Ontario Mechanism for Internal Review of Complaints from the Public." We are happy that they now have in place a review mechanism of these complaints. We are happy that this came about as a result of the complaint that was brought to our attention.

We indicated in our letter to the Ombudsman that there was such a problem and we asked her how this might be resolved. I guess as a result of that complaint they put in place a mechanism. We are happy they have done that because clearly there was no sense of this mechanism being there before. There was no discussion with us about such a tool or mechanism for such reviews, and we are happy that this came about.

My suggestion would be that we write to the Ombudsman indicating the matter of contradiction between the approval or lack of approval being given or received or refuted, whatever, just to let them know that there's such a problem that still is on and the other, that we are happy that there is a mechanism for internal review of complaints from the public and that in the future, where possible, these matters be discussed with the committee in advance. I think such a letter would be useful for us as a committee to write to her.

The Chair: That's a very good summary of where we've been. There was no policy, then there was a complaint and there was a policy. Any other comments?

Mr McLean: With regard to the recommendations by the subcommittee on committee business relating to the following matters, and that is to do with complaints against the Office of the Ombudsman, "that the committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular case," is that what is happening here?

The Chair: No.

Mr Pat Hoy (Essex-Kent): In answer to that, we are not interfering with the case put before the Ombudsman but rather the application of certain policy. I don't believe the committee is interfering with the investigation of a case. We are simply trying to deal with a complaint in regard to taping, not in regard to the outcome of what-

ever this person's complaint is with the government or whatever agency it might be.

I would further just say that I'm pleased that we have this authorization, that in the future it will be done by signature, so that people will know exactly what the Ombudsman is going to do and we have signatures of consent for taping, if it's required, and all parties agree. Apparently in the past, as we see now, there's a contradiction as to whether permission was given or not. But I think a signed authorization to audiotape will be beneficial in the future.

I don't think we're interfering in the case. We are dealing with the application of a certain policy in regard to audiotaping.

Mr McLean: But this individual was taped without the

knowledge of anyone. Is that correct?

The Chair: We aren't involved in any respect other than the correspondence written. One said they didn't break any rules and the complainant suggested they did break the rules. But we're not involved with that. We're making sure that there is a policy in place and, as the researcher has explained, that it's done appropriately and according to the law and the mandate of the Ombudsman's office, and in full knowledge. Now they have to have a signed form of consent from the person participating in the investigation.

Clerk of the Committee: Mr McLean, the mandate of the committee is, and I'll read it for you, "to formulate general rules for guidance of the Ombudsman in the exercise of his or her functions." By reviewing the case strictly on policy the committee is following its mandate. You are not asked to look at the case and make a judgement on it. You are simply concentrating on the policy of taping of conversations. You are asking the questions: What was the policy? When was it set? In accordance to your rules here you are doing exactly what the Legislature is recommending to you that you do.

The Chair: Mr Marchese has made a recommendation that we have a letter sent. I'm just asking if there are any other comments on that with respect to concluding that

inquiry.

Mr Parker: I might add just these comments: First of all, I endorse Mr Marchese's suggestion. This is why: Just bear with me as I review the matter. I'm frankly not so concerned about the taping per se. I'm satisfied, as our researcher has pointed out to us, that all laws were complied with and there's no difficulty on that score; that whatever was done was legal, was proper and there was no impropriety in what was done.

I appreciate that the gentlemen who wrote us about the matter didn't like it and I have some sympathy for that. I'm grateful to him for bringing it to our attention, but the fact that he was taped per se is not what's on my mind right now and is not the concern I have right now.

I find it interesting to review the sequence of events here. This gentlemen was a client of the Ombudsman's office, had a relationship with the Ombudsman's office and at some point along the line discovered that his conversations were being taped. He had not been asked for permission. He had not been told that they were being taped. Somehow or other he found out during the course

of his involvement with the Ombudsman's office that he was being taped.

As the correspondence indicates, he raised an objection with the Ombudsman's office at that time and he received a letter in response from the Ombudsman's office which he has forwarded to us, dated February 18. We haven't noted who signed it; it was signed by the Ombudsman herself. In that letter of February 18, 1997, it says: "Please be advised that there is no written policy in place for recording telephone conversations. However, the expected practice is in situations where my investigative staff are aware that extensive verbal information is likely to be provided, they may take the precaution of backing up their written notes by making an audiotape recording for reference purposes." It goes on to say other things, but the letter says, in February 1997, there is no written policy on these matters. There is this practice, however, that under certain circumstances tapings are made.

That letter is forwarded to us by the gentleman who brings the complaint. We received that letter in this committee. We considered the letter, and without referring to it specifically and without referring to the gentleman by name, we instructed you, Mr Chair, to write to the Ombudsman and say, "What is your policy on taping conversations?"

That letter went out May 28, 1997, and it received a response June 3, 1997 — a pretty quick turnaround, May 28 to June 3 — and the response on June 3, signed by the Ombudsman, indicates, "Thank you very much for your letter of May 28. I am pleased to share with you a copy of the Ombudsman Ontario's policy on the audiotaping of conversations. As you will note, although it is not the practice of Ombudsman Ontario to audiotape meetings or teleconferences with clients during the course of investigations, there are rare and extenuating circumstances" and so on. "In such cases audiotaping should only take place with a manager's consent and if prior written consent is obtained from the client or other person to be interviewed." Included in that letter is a copy of this document on Ombudsman Ontario stationery entitled "Mechanism for Internal Review of Complaints from the Public." In here is discussed the policy regarding audiotaping of conversations.

1030

On June 3, 1997, there was a written policy in the Ombudsman's office concerning audiotaping of conversations, and that was conveyed in the letter of June 3, but as of February, just a few months earlier, there was no policy. That's fine, but what disappoints me is that in the letter of June 3 there's no suggestion that this policy is new, there's no suggestion that this policy was not in place indefinitely. The assumption would naturally be, based on the letter of June 3, that there's a policy, there's always been a policy, here's what the policy is.

It's only because we received other correspondence from this other individual that we are aware that there wasn't a policy as recently as February. Granted, we didn't ask for a history of what the policy is and has been over the course of time, but I'm disappointed that information wasn't conveyed to us. I'm disappointed to feel that we have to go digging for it if we're to find out

these things, that if you don't ask a specific question, you don't get a complete answer to the inquiry.

Yes, we got a specific answer to the question we asked: "What is your policy?" But I would have been more encouraged if the response had been a little more forthcoming and a little bit more of the background had been shared with us. I'm left with the unhappy feeling that the response we received on June 3 was a little less than forthcoming with the committee. I just have to put those thoughts on the record, because right now that's where my concern lies.

Mr McLean: Who is the correspondence from?

Mr Parker: The correspondence I'm referring to is from the Ombudsman.

The Chair: The complete correspondence and the sequence Mr Parker has outlined get us to exactly where we are. It was more the process. Mr Marchese has suggested that the Chair communicate in writing with the Ombudsman summarizing what Mr Parker has just said. Does anyone have any other comments?

Mr Ouellette: What Mr Parker just laid out being the case, I hope we would include, "Why wasn't the policy followed through with?" If this was the policy in place, obviously the individual did not sign off, according to the individual; until we hear otherwise, that this is a new policy, we have no idea why it was not followed through.

The other aspect is, what other policies are there that

we have no idea about unless we start prying?

The Chair: I think your point is well taken, and that's the whole purpose of the 1993 report, the role of this committee and the role of policy review, if you will.

We'll deal with the first thing, whether there are any other comments on the issue of the complaint. We are now considering directing the Chair to write to the Ombudsman. Does anybody have any other concerns about that? Do we need a motion? I think we should. It's moved by Mr Marchese.

Mr Ouellette: Can we get an outline of exactly what's

going to take place now?

The Chair: The letter will draw to the attention of the Ombudsman the three particular pieces of correspondence which Mr Parker has outlined: the February one where there was no policy being brought to our attention, our May letter to the Ombudsman and the June letter from the Ombudsman back, as well as the fourth piece of correspondence, which is the June 4 letter from the complainant disagreeing. Those will be summarized, saying, "We're pleased that you do have a policy now dealing with taped conversations."

Mr Ouellette: Will we also ask why it wasn't followed through with in this particular case?

The Chair: I think the case was already solved. I think it was done before there was a policy.

Mr Ouellette: We should make sure that the Ombudsman makes that decision rather than us.

The Chair: Yes, that's a good suggestion. We could maybe include that, clarify it. Any other comments?

Mr Marchese: You might want to pass through to the opposition parties and one of your members a review of that letter before it gets sent off.

The Chair: Sounds good. I'll review it with the subcommittee. How's that? All those in support? That's

carried unanimously. Very good. We'll be hearing more about that, I suppose, as we move closer to the end.

Back to the main item of the day. I'm open to suggestions. We're just going to review these. This is a very large report, but there is a summary in the back of the report. I'm wondering if that would be appropriate, or do we need the details?

Clerk of the Committee: Perhaps it would be easier if I Xeroxed them and passed them out.

The Chair: Okay. There's a list of all the recommendations and then there's the comprehensive report.

Mr McLean: Mr Chair, while he's getting copies of that for all the members, there were a couple of issues that were raised in the first meeting which I attended. Unfortunately, I missed last week's meeting. I'd like to raise a couple of issues that the Ombudsman had raised. She indicated that with regard to the estimates, she wanted them to go to the Board of Internal Economy. I sat on this committee for many years some years ago, and the committee always looked at the Ombudsman's report. We usually had the Ombudsman in, we asked questions, and we got answers. I hope they're not indicating that if it goes to the Board of Internal Economy for approval, nobody has a chance to ask questions any more. That seems to me to be the route the Ombudsman would like to go.

There's another recommendation in here that says, "That the committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular

case."

The Chair: Do you have the reference, Mr McLean? Mr McLean: Recommendation 32. Many years ago, a company had a case against the Ministry of the Environment, and this company was involved with the Ombudsman's office for some 10 years. We had a great rapport with the previous Ombudsman. I remember that Ed Philip and I — the Ombudsman had sent a letter stating that the case was closed, that there would be no further investigation. The committee reopened that case and that company was paid by the Ministry of the Environment. The lawyers came together and dealt with that.

I hope we're still going to be able to do those types of things. I know this case went on for 10 years, but it was still dealt with. I know of other cases the committee dealt with, based on a report from the Ombudsman. I hope

those things are going to happen.

When I read recommendation 32, "That the committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular case," is the committee still going to be in power or is the Ombudsman going to have all the power? Those are some of the concerns I have. I know the present Ombudsman indicated that the case was closed, and the committee brought it back and resolved it. There's a concern here.

The Chair: As I said, the committee did meet with the Ombudsman in camera to review this report, and you're right, those very duties were clearly central to the whole discussion: who's in control. I think we're trying to deal with it at a policy level, not at a case level. Even in the case of this particular complaint on taping, the argument Mr Parker is making is that the particular complaint, whether it was or wasn't — there should be a policy in place to make it clear what is appropriate to happen. That's the role of this committee, as far as I'm hearing. 1040

As we go through each recommendation, arguments have been made for a couple of years — the history is that this report, as you well know, Mr McLean, was presented to the House, and the House simply sent it back to this committee. Really it underscores that the whole question is, what is the role of this committee? If at the end of the day there isn't a role for this committee, then I suspect the favourite question is, where do we go from here?

Mr McLean: If we're not going to review the estimates, if the committee is not going to review the Office of the Ombudsman, then what is the function of the committee? I always thought that was the opportunity, and we always worked well as a non-partisan committee; it was always non-partisan and we dealt with the Ombudsman straight up front, and there was never any problem. I see now that the Ombudsman does not want the committee dealing with certain things which I believe it has the right to do.

Mr Hoy: I think there is a certain flow to the recommendations, some 44 or so of them, that will help new members on the committee understand what has taken place over the last year or so. If we go through them individually, we'll see the flow and the ideas that came through the 1993 report and new information and opinions that came through just recently, and I think in total, new members of the committee will understand the proposed role of this committee as it pertains to the Ombudsman.

If we could move to going through these recommendations one by one, it will become clear what this committee will be doing in the future, subsequent to whether we approve all these recommendations or what action we do actually take.

Mr Parker: Mr Chairman, that's exactly what I propose. I think some of the concerns that have been raised will be addressed in that process.

Mr Marchese: I would just suggest in terms of the process that we review each recommendation one by one. There may be some questions on some of these; some of these can flow very quickly because they may be quite clear and not conflict with anything we might have said or anything the various people who came to make deputations said. So review each one, take some time to review briefly in our own minds what the deputations said — or have Philip do this for us, because there may be some conflict of opinion, and with those we might need a few more moments. But I suspect on most of these there won't be too much discussion.

The Chair: Very good. We'll learn; we'll get better as we do it here. We can start with recommendation 1. I'll just read it into the record.

"Scope of the Ombudsman's Function: Systemic reviews:

"1. That the committee consider, as part of its proposed review of the need —"

Mr Parker: Mr Chairman, I propose that we dispense with the reading. We've all got copies in front of us. Unless we want to focus on one for some period of time, I'm not sure any purpose is served.

The Chair: That would be easier. We'll just take a minute, then, to reflect quietly and read —

Mr Parker: I think you could just ask if there's any comment on number 1.

The Chair: Mr Hoy?

Mr Hoy: At our last meeting, Mr Parker, you and I discussed number 1 briefly. I referred back to a March document that was given to all parties.

The Chair: Yes, a March 19 document.

Mr Hoy: I'm speaking of approximately March of last year, 1996. I think you concurred with me at our last meeting of this committee that we had some opposition to recommendation 1. We were talking about my discussions with Mr Galt some time ago.

You seemed to recall that at the last meeting indeed we did have opposition to recommendation 1. The meeting did not continue beyond that, for other reasons. I will just restate our opposition to recommendation 1. It was an undertaking that Mr Galt understood at the time, and I wonder if your memory is now refreshed that, yes indeed, it was an undertaking that perhaps from your side you also would disagree with recommendation 1.

**Mr Parker:** As a shortcut, can you just lead me to the conclusion you were going to recommend: that we delete recommendation 1?

Mr Hoy: That's right.

Mr Parker: I'm comfortable with that.

Mr Marchese: This is one of the recommendations that, if it had gone through, we would not have agreed as a party to have allowed this report to be dealt with by the whole House. For the NDP, the matter of systemic review is critical. We felt that the Ombudsman should have the ability and the power to do that in the way that office might see fit. Systemic reviews are critical in her ability to deal with individual matters; the two are very much interconnected and the one sometimes flows from the other, and we needed to leave her that discretion. The deletion of this is important to us.

The Chair: For recommendation 1, are there any other comments? The recommendation at the moment is to delete recommendation 1. Agreed? It's carried.

Read number 2, please: "Awareness and Accessibility."

Mr McLean: I found over the years that the Ombudsman would advertise across the province advising people, if there's a complaint against any government agency, how to get in touch with the Ombudsman's office. I don't know whether that's an ongoing procedure that's used every year. I know it's very costly and I'm just wondering if there's a need that there have to be ads put out to invite people to complain to the Ombudsman's office.

Mr Parker: If I might suggest, I'm not aware of any disagreement with provisions 2 through 5. When the Ombudsman appeared before the committee she indicated her support for these recommendations. I don't think anybody else raised any objection to these recommendations and I think the members of the committee have all been supportive of these recommendations. I see the researcher is signalling me. Maybe he can bring our

attention to any discussion that has occurred on these, and that might give us the basis of a discussion now. But if my recollection is correct, I think we can dispense with these fairly quickly.

Mr Kaye: There was one objection raised to the second part of recommendation 3, that government departments and agencies provide information on the Ombudsman's office. That concern was expressed by Ron Ellis. In the summary of the submissions Mr Ellis's concern appears at the top of page 4. He felt that if a tribunal had to give information concerning the Ombudsman's ability to investigate the tribunal's decisions to all losing parties, that would be seen as an invitation by the tribunal to further litigation. He continued that there were problems which had to be examined in terms of when, where and by whom such information should be given.

Mr Marchese: This recommendation, "That government departments and agencies be required to make information on the Ombudsman's services available at all public service contact points," seems reasonable. This individual says that would be a problem because —

Mr Kaye: He was concerned that when that recommendation was applied to tribunals, it would mean that the tribunal would have to give information to all losing parties that they could go to the Ombudsman office. He felt that would be seen as inviting more litigation.

Mr Hoy: In regard to tribunals, I believe the Ombudsman stated that she does not investigate the outcome of a tribunal's decision but, rather, investigates whether the proper process took place. There's quite a difference in her role, the current Ombudsman, as to how she would deal in the future with tribunals. I think had Mr Ellis perhaps heard the Ombudsman state that she only looks at the process of the tribunal and not the decision, he may have had more comfort knowing that. I have no problem with this particular recommendation in light of the fact that the Ombudsman has stated this is her sole role when it comes to tribunal decisions. She doesn't make a judgement about it in that regard but only looks at the process.

1050

The Chair: Any further comments? I remember Mr Ellis. He was from the WCB and he did suggest that they would be — but I agree, if she's not going to look at the decision so much as the process, then I don't have a problem with it. Everything should have a process, which means perhaps the Ombudsman has to have a process too.

Mr Parker: My only reservation about point 3 is the absolute nature of the wording of it, but I support the intent that it's driving at and I'm comfortable that this committee can proceed with this wording, and if the Legislature in its wisdom wants to revise it, leave it to them to consider that. That's the only reservation I have concerning this provision, and I'm happy with provisions 2 through 5 as they stand.

The Chair: Provisions 2, 3, 4 and 5 have been moved to be adopted. Any other comments?

Mr Marchese: Just a quick question. I know the Ombudsman says under recommendation 2 that she would "welcome the opportunity to share these plans with the committee...but it would not be appropriate to submit them for approval of the committee. Such approval would

undermine the public's trust in the independence of the Ombudsman's office." I wasn't entirely sure that was the case. That was her objection.

Our proposal 2 says, "That the Ombudsman present, as part an annual ombudsplan, proposed public education initiatives...." It simply says, "Do it. We'd like to see it." It doesn't say, "We will approve it or disapprove it," but it's to be submitted and we would look at it. We may want to comment on it, but it doesn't give us the power to necessarily say yea or nay, except that we'd like to see it. I don't think it's a problem, by the way. I think we can vote on all these.

The Chair: All those in support? That's 2 to 5 inclusive.

Mr McLean: I thought it was 2 to 4.

The Chair: It's 2 to 5.

Mr Parker: Recommendations 2, 3, 4 and 5.

Mr McLean: I oppose number 5.

The Chair: Let's deal with 2 to 4 first. All those in support? That's unanimous. Good.

The Chair: Number 5. Mr McLean, you had some — Mr McLean: It says the act is to "be amended to provide that the Ombudsman may engage in public education..." Don't 2 to 4 cover that? What part of the act are you wanting to amend? Numbers 2 to 4 talk about the public education, to inform members of the public. Why do you have to amend the act in number 5?

The Chair: I would ask if Philip, the researcher, would tell us why that is. Is that a redundant recommendation? Is there some provision in the Ombudsman Act today to allow the education of outreach?

Mr Kaye: There's no specific provision in the Ombudsman Act currently authorizing the Ombudsman to engage in public education, so such an amendment would confirm existing practice.

The Chair: The annual report yesterday was somewhat educational.

Mr Parker: I would just like to draw to the attention of the committee the rationale that was included in the 1993 report itself. It boils down to this: "It is important that the act reflect actual practice. It is clear that all ombudsmen have and should promote the public's awareness of the services that they provide." With that in mind, this recommendation was put forward. I think that rationale is sound. I see no harm in proceeding with it. I understand Mr McLean's point as well, but I see no harm in proceeding.

Mr Pettit: I'm going back to the Revised Summary of Recommendations. It seems to me that Ombudsman herself said an amendment to the act accordingly is not necessary. She does go on to say, however, that it would "underline the importance of this work, but care would have to be taken to ensure that the wording did not have a limiting effect." I think that's what Mr McLean has illustrated, and if the Ombudsman herself feels an amendment is not necessary, then neither do I.

Mr Marchese: "Authority to engage in public education." She says, "An amendment, however, would underline the importance of this work, but care would have to be taken to ensure that the wording did not have any limiting effect." This wording does not have any limiting effect and including it in the act simply underlines the

importance of this work that is already being undertaken. We are simply putting in the act what is already being practised, and I think that's a fair thing to do, as Mr O'Toole was indicating. It isn't a big deal, but I think it's best to put it in the act rather than simply leave it to practice.

Mr Kave: I should add that in 1989 extensive amendments to the Ombudsman Act were introduced in a bill known as Bill 80. One of the amendments specifically would authorize the Ombudsman to engage in public education. So this was an amendment that was recognized

in a government bill back in 1989.

The Chair: Did it pass?

Mr Kaye: An election was called.

The Chair: So it never got passed. We're going to amend it right here and now almost, if we can get this report done. I'm calling the question again on recommendation 5. All those in support? Opposed? There you go, it's carried.

Number 6, complaints in writing.

Mr Parker: I want to thank the two opposition parties for supporting that recommendation.

Mr Marchese: We're all friends.

The Chair: This is a non-partisan committee and we'll keep it that way, Mr Parker, please. You should know better.

"6. That the act be amended to provide" the following. Mr Pettit: Mr Chair, just if you might enlighten me: My question is, not having been here before when this was done, how did the recommendations come to be in the previous committee? Second, are they then voted on, that okay, we're going to put number 2 through 5 forward? Are they voted on as recommendations that we want to put forward? Is that how they happen?

Mr Parker: That's my recommendation.

Clerk of the Committee: If I can clarify that, what the committee did in 1993, we had 10 years of information gathered by the committee on specific issues that had arisen during those years. When we conducted our hearings, many people specifically pointed out where the concerns were and the committee debated these issues. Every specific issue brought before it was accumulated and debated and then they specifically gave direction how that recommendation should be written, the exact words. Having reviewed the exact words, on each recommendation they did exactly like you're doing now. They wanted a consensus of all three parties and unanimous consent if it was agreed to; if not, then they went with the majority.

Mr Pettit: Each recommendation was unanimous?

Clerk of the Committee: No. Some of them were, but not all of them.

Mr Pettit: But they were voted on?

Clerk of the Committee: Yes. All of them were voted upon and the majority ruled on them. I must say that very few of the recommendations were voted on. The committee took its time and reviewed everything and there was agreement.

The Chair: We're dealing with item 6. Any questions

or comments? If not, I'll call the question.

Mr Parker: I'd just like the researcher to remind us of what discussion has already occurred on this, if any.

Mr Kave: During the committee's recent hearings, the only submission that dealt with recommendation 6 was by the Ombudsman. The recommendation gets at section 16 of the Ombudsman Act, which requires all complaints to the Ombudsman to be made in writing. As I mentioned, the Ombudsman was the only person to comment on it and said that while the recommendation, if implemented, would be helpful, practices were currently in place to ensure that the requirement of a complaint being filed in writing did not pose a barrier and that the Ombudsman's office did have means of assisting people to put the complaint into writing.

1100

Mr Parker: I see no reason not to proceed with accepting recommendation 6.

**The Chair:** All those in support of recommendation 6? Opposed? It's carried unanimously.

Number 7, public comment on investigations.

Mr Parker: I think number 7 has been reviewed by this committee and amended, so I think we should draw the attention of the members of the committee to the revised recommendation 7 in the working paper.

The Chair: That's the working paper here.

Mr Parker: I'd like to invite the researcher again to remind us of the discussion that has taken place so far on that but with specific reference to the submissions that were made during our hearings.

Mr Kaye: This was one of the issues where the submissions were not in agreement. The revision to the recommendation in the working paper added the words "by means of a special report to the assembly" to denote the way the Ombudsman would make her public comments.

The Ombudsman had concerns about the drafting of recommendation 7 but not the principle of the recommendation. She said that she wished the recommendation had gone further, and her comments are outlined on page 5 of the summary. The revision adding the words "by means of a special report" was opposed by the Union of Injured Workers of Ontario and by the Ministry of the Solicitor General and Correctional Services as well as by the Ombudsman known as the Public Protector of Quebec.

The Union of Injured Workers said, for instance, that comments should be made publicly and not be restricted

by means of a special report to the assembly.

The Public Protector favoured a power of public comment similar to what was in the Public Protector Act of Quebec, and the relevant provision of the legislation in Quebec is reproduced at the bottom of page 6 of the summary.

The Ministry of the Solicitor General and Correctional Services felt that the requirement to comment publicly by means of a special report to the assembly would limit the Ombudsman's ability to make public comments and considered this limitation incompatible with the need for the Ombudsman to maintain the principles and perception of independence and impartiality.

My understanding is that of all the revisions by the committee, this is the one that received the most

opposition.

Mr Marchese: If I can, Mr Kaye, the objections aren't just to the first part. There are two parts to this recommendation. The objections are as well to "by means of a special report to the assembly" because it's too restrictive — at least the comments made by one, and there's objection to the second part as well "That the amendment should further provide that no such comments may be made during the course of an investigation."

Mr Kaye: I'm not sure if the objection is to the

second part.

Mr Marchese: The UIW said, "When it is in the public's interest, the Ombudsman should be able to comment publicly after an investigation in order to bring to light a government agency's refusal." That's during, so I guess he's not speaking —

Mr Kaye: Yes.

Mr Marchese: Okay. That's fine. I am persuaded by most of these folks that we should just drop "by means of a special report to the assembly" and, in so doing, the other recommendation would become the original.

The Chair: Recommendation 7 is being revised in the first part by adding the words "by means of a special

report," which is highlighted in the -

Mr Marchese: I'm recommending that we delete that.

The Chair: Delete it?

Mr Marchese: That's right. It was revised, and I'm suggesting, based on the comments made by the various deputants, that that is a problem. That would revert us back to the original motion.

The Chair: To the original motion; so we're not revising it. Any further comments? We're now voting on the original motion, unamended. All those in support?

Mr Marchese: Is that correct, Mr Carrozza, in terms of process?

Clerk of the Committee: That's fine.

The Chair: Yes, because it was never formally amended. We're still dealing with recommendation 7.

Mr Marchese: Very good. I'm in favour.

Mr Parker: I'm going to ask that we stand this one down, and I'll tell you why, to be quite candid. I wasn't here when the committee discussed inserting those words. Before I vote on the matter I'd like to review the issue with those who were here and just be comfortable that we've fully considered what we're doing here. I'd be happy if we stand this down and come back to it another time.

The Chair: We're going to set aside number 7 to clarify that. We'll ask Mr Parker to bring that back to the committee for next week. Any other comments on that before we move along?

Moving on to 8: "That the act be amended to provide that the Ombudsman...." Does everyone agree with 8,

special reports?

Mr Parker: Can I just make a standing request that each time we raise a point, the researcher be invited to report on what the comments were in the hearings?

Mr Marchese: That would be helpful.

The Chair: Sounds good.

Mr McLean: Chair, this reads "the act to be amended to provide that the Ombudsman may make special reports...." But on page 6, under "Special Reports on Performance of Duties," it says: "The Ombudsman is not precluded now from making such special reports. The proposed amendment to the Ombudsman Act, however,

may provide additional clarity." She says they don't need it now for special reports. Then why are we amending it?

Mr Pettit: If the Ombudsman sees how clear it is now, that he/she can in fact do this, I don't see where any

additional clarity could be made.

The Chair: It's very clear. This whole idea of where the Ombudsman reports and under what situation is what is trying to be clarified here. Am I not correct? Calling a press conference is not one of them. The ombudsperson would believe that's their mandate to release a special report.

Mr Parker: Chair, we don't have to speculate about this. The rationale is included in the 1993 report. This is a recommendation that was in Bill 80, which was mentioned earlier. For an understanding of the rationale all the members of the committee have to do is take a look at page 30 of the 1993 report; there's the rationale.

I return to my initial request that in each case when a matter is brought in front of us, in this case number 8, we turn immediately to the researcher and have him report to us on what the comments were during the public hearings. If there were no comments, Phil, just tell us there were no comments. I think that'll help focus the discussion and consideration.

The Chair: If I may, there were comments on every one, so we'll start that way.

Mr Kaye: Regarding recommendation 8, the only comment was made by the Ombudsman. As has been mentioned, the Ombudsman submitted that she was not precluded now from making such special reports. That conclusion is subject to some debate. As was just pointed out, Bill 80, which was introduced in 1989, did make provision to amend the Ombudsman Act to authorize the Ombudsman to make special reports.

I believe the Ombudsman, in saying she currently has such authority, relies on section 11 of the Ombudsman Act, which says, "The Ombudsman shall report annually upon the affairs of the Ombudsman's office to the Speaker of the assembly...." There's no reference to special reports as such. One interpretation of section 11 of the Ombudsman Act in saying that "The Ombudsman shall report annually," is that it's authority for the Ombudsman's annual report only and not for special reports. But I believe the Ombudsman interprets section 11 as authority for special reports as well.

What the committee was saying in 1993 was identical to what was in Bill 80, in that the committee was proposing that the Ombudsman Act come right out, be explicit and say that the Ombudsman has authority to issue special reports.

1110

The Chair: Any other questions or comments on 8? All those in support of 8? It's carried.

Moving right along to number 9.

Mr Kaye: Recommendation 9 was another that did not receive extensive comment. The Ombudsman was the only person to refer to it. The recommendation deals with problems which had arisen regarding the Freedom of Information and Protection of Privacy Act.

A problem had arisen with respect to the disclosure of certain documents provided by the Ombudsman in confidence to a governmental organization, in terms of the background of this recommendation. In particular, the Information and Privacy Commissioner had decided that the freedom of information act could apply to information which originated in the Ombudsman's office and which was now in the custody or control of an institution covered by the freedom of information act. Under an access request, the institution would have to disclose the records unless they fell within one of the exemptions under the act.

As a result of a decision by the Information and Privacy Commissioner in this matter, the Ombudsman had adjusted her investigative practices, and instead of providing tentative findings in writing to a governmental organization, she did so verbally.

The comment by the Ombudsman in regard to recommendation 9 was that a provision might be added to the Ombudsman Act to deal with this difficulty in preserving the confidentiality of tentative reports. She also said it would be helpful if other issues relating to the relationship between the Ombudsman Act and the freedom of information act were addressed, such as clarifying investigative powers, but the recommendation of the committee in the 1993 report simply calls for consultation on this issue.

Mr Hoy: That was precisely what I was going to point out, that the standing committee on the Ombudsman consult with various bodies to determine confidential information etc within this. It's a consultative approach in this recommendation, and we could support 9.

**The Chair:** All those in support? Carried unanimously. Number 10, Philip.

Mr Kaye: Recommendation 10 deals with the authority of the Ombudsman to make certain applications to Divisional Court. Currently, the Ombudsman is empowered to make a court application to determine his or her jurisdiction to investigate particular cases. That power is reproduced in paragraph (a) of recommendation 10, so that does not involve a change.

The change is the second part of recommendation 10, the reference to going to court for an interpretation of any provision of the Ombudsman Act. This kind of amendment to the Ombudsman Act had been included in Bill 80. The committee in 1993 felt that such an amendment would be useful.

ment would be useful.

Recommendation 10 was only commented upon by the Ombudsman, who remarked that she had never had any occasion in the past to consider making an application with respect to paragraph (b); that is, concerning the interpretation of any provision of the Ombudsman Act. However, she still felt that such an amendment would be of assistance in the future.

By way of background, the committee back in 1992 did make a recommendation that the Ombudsman make a court application to determine the scope of her oath of secrecy under the Ombudsman Act, so there was an occasion in the past where the Ombudsman was asked to make such an application.

She issued a special report in 1992 in response to this committee report in 1992, and in response to the recommendation that she go to court for an interpretation of the scope of her oath of secrecy, she answered that such an application was ill advised, for two reasons: first of all,

that applications under subsection 14(5) of the Ombudsman Act applied only to questions of the Ombudsman's jurisdiction to investigate cases; her second reason said that if the Legislature wished the Ombudsman to provide it with documents which had led to the committee's request, it had the option of changing the legislation.

But the key part of her response was that when she was asked to go to court to get an interpretation, she responded that the Ombudsman Act did not provide that

authority.

**The Chair:** Good. On recommendation 10, two parts dealing with the court applications. Any other comments?

**Mr McLean:** We're dealing with number 6?

The Chair: Number 10. Any other comments? All those in support? It's unanimous.

Mr McLean: It isn't unanimous. You'd better ask who votes no

The Chair: Oh, pardon me, Al. Opposed? It's carried. Recommendation 11.

Mr Kaye: Recommendation 11 deals with cases where the Ombudsman recommends that payments be made to complainants. A problem had occurred whereby a governmental organization might feel that it did not have the authority to make a payment to a complainant on the Ombudsman's recommendation.

This recommendation was commented upon in two submissions, by the Ombudsman and by the Ministry of the Solicitor General and Correctional Services. The Ombudsman in her submission said that some governmental organizations were unclear as to what extent they had the legal authority to pay compensation on the recommendation of the Ombudsman. Accordingly, she felt the amendment provided for in recommendation 11 might provide clarity.

The Ministry of the Solicitor General and Correctional Services proposed an amendment to recommendation 11 that would indicate that the consolidated revenue fund would be the source of the payments. The ministry commented that governmental organizations would not likely include these payments in their annual budgets.

So one submission was in favour and the other proposed an amendment.

Mr Marchese: But my suspicion is that the Ombudsman would not object to the money coming from the consolidated revenue fund. I suspect they're both in agreement. The other is in agreement too, except they're proposing where it should come from; because people may not be budgeting for such a thing in their own budgets, it's good that it come from the general fund instead of a specific ministry. It's all part of one fund in the end anyway, but it does protect the ministry to some extent if it comes from the consolidated revenue fund. I have no objections to that, necessarily.

The Chair: There are a number of arguments that could be made on that.

1120

Mr Hoy: I concur with Mr Marchese on this issue in terms of where the money comes from, the fact that ministries may not have budgeted for the money. The suggestion of an amendment here seems logical to me. I propose that the clerk include an amendment to number 11 that deals with the recommendation that the moneys

come from the consolidated revenue fund. Then when we discuss recommendation 7, which we must revisit at another time, we could deal with that amendment included in number 11 and number 7 at the same time.

The Chair: Would you like to wait on that amendment until Mr Parker and others have spoken?

Mr Hov: I would.

The Chair: Unless there's concurrence to come back to it

Mr Parker: No, there won't be. With all respect, I don't see that an amendment to item 11 is necessary. I'm going to suggest that it's none of our business on this committee where the money comes from. The comment that was made by the ministry is a fair comment, but that's a matter to be decided in another forum in another process, not by this committee.

We don't care whether the money comes from the ministry budget, the consolidated revenue fund or some other fund. What we are addressing in item 11 is the narrow point that if the Ombudsman recommends that a payment be made, that recommendation in itself be recognized as authority to make a payment; not a requirement that a payment be made, but it gives authority for a payment to be made. Someone else will decide if a payment is to be made, and someone else will decide where that payment, if it is to be made, is to be made from.

All we are saying in item 11 is that if the Ombudsman makes a recommendation, that recommendation creates a certain authority on the part of a governmental organization. I'm happy leaving it at that. Frankly, I'm uncomfortable trying to do more than that in section 11.

Mr McLean: The Ombudsman does direct who makes the payments. Dealing with cases we've had before, that has been done. I don't know why we even need section 11 to change it. As to whether it's the ministry that's going to pay or the consolidated revenue fund, if it's the ministry the complaint is against, that ministry would logically be the one trying to defend the complaint and therefore that ministry should be the one that does the paying, as has taken place in the past.

If it's going to be the general revenue fund, those ministry people would say, "Well, if it's not coming out of our budget, we make no defence against this claim." I think they have to defend their claim, and I think it would have to come out of the ministry budget. That would be the recommendation the Ombudsman has made in the past, and I presume she has the alternative if she wants to do otherwise. But I don't think it's a necessity to have section 11 in there.

Mr Marchese: The reason for its necessity appears to be made clear by the Ombudsman, where she says, "From time to time, some governmental organizations are unclear as to what extent they have legal authority to pay compensation." Recommendation 11 makes it clear that someone has to pay. If we leave it without making the recommendation that the consolidated revenue fund pay it, in my mind it's clear that once they're directed to pay, it would be the ministry. I really have no quarrel about who pays, the ministry or the consolidated revenue fund, because at the end of the day it's the same money. Some ministries might be affected by it somewhat, but I'm not sure a great deal; I'm not sure of the amount of money we're talking about at the end of the day.

Directing who should pay, and the suggestion was that we have the consolidated revenue fund do it, is in my view not a bad thing to do. I understand what Mr Parker is saying, that we don't need to worry about who pays, that it shouldn't concern us; somebody else will figure that out. That somebody else automatically will be the ministry that is directly connected to the issue. Unless we direct the whole House to support another recommendation, nobody really will look at it, so quite clearly it will be the ministry that will be paying, whatever ministry is affected. We're simply making the recommendation that the money come out of the consolidated revenue fund.

I'm going to support that suggestion. At the end of the day, it may not matter a whole lot, but if it comes out of a general fund, I think it's not a bad thing to do and directing the assembly with such a recommendation is not a hurtful suggestion to be making.

The Chair: I think Mr Hoy put forward a proposal. If that's the case, we have an amendment. Do we?

Mr Marchese: Mr Hoy recommended an amendment. We could just vote on that.

The Chair: You were going to support it, so that's on the record. We're voting on an amendment, which was also proposed by the ministry in the original hearings, that it would come from the consolidated revenue fund.

Mr McLean: Is that his amendment, that it would? The Chair: It would be all of number 11, in addition to directing it to come from the consolidated revenue

Mr Marchese: That's the addition.

The Chair: We're voting on the amendment. The amendment would be added to recommendation 11.

Clerk of the Committee: The question for me is where? Do you want to put it at the end? Is that what you're saving?

Mr Marchese: It could be (a) and (b) or (1) and (2). Mr Hov: "From the consolidated revenue fund" at the end.

Mr McLean: And not from a ministry. What you're saying now is that all payments will be made -

Clerk of the Committee: No, no, that's this amendment.

Mr McLean: I know, but what he's saying now is that all the payments would be made from the consolidated revenue fund.

Mr Pettit: Is that what you're saying, Pat?

Mr Hoy: That's the implication.

The Chair: The argument made is that the unbudgeted expenditure would not be in the budget for the ministry, and the only way they could get it is to go to the consolidated revenue fund.

Mr McLean: But you've got to make somebody responsible.

The Chair: I agree. That would be clearly my reason for not amending it, but I'm just here counting the votes.

Mr Marchese: Let's go to the vote.

The Chair: We're on the amendment. The amendment will just be recommendation 11 with the directions coming at the end of those words. All those in support of the amendment? Opposed? That's lost.

We're now going to vote on the original recommendation 11. All those in support? All those opposed? That's carried.

On to number 12.

Mr Kaye: Recommendation 12 addresses the situation where the Ombudsman may have recommended that a governmental organization should reconsider a decision and the organization in question felt it didn't have the power to do so.

The recommendation was made in 1993, and in 1994 the Statutory Powers Procedure Act was amended, and the amendment is at the bottom of page 8 of the summary. It provides that "a tribunal which exercises a statutory power of decision and which conducts hearings may, if it considers it advisable, review...its own decision."

In her submission during the hearings, the Ombudsman commented that although this amendment to the Statutory Powers Procedure Act had already broadened the opportunities for a governmental organization to reconsider its decision, the proposed amendment to the Ombudsman Act found in recommendation 12 would be a welcome addition.

It seems to me that the Ombudsman's comments were the only comments directly made during the hearings on recommendation 12.

Ron Ellis's submission, which is also summarized on page 8, appears to deal more with rules that might come out of this recommendation. He was concerned about the use of the word "reconsideration," saying it was inherently ambiguous. He felt that any rule governing reconsideration of tribunal decisions should recognize that when you spoke of a reconsideration, there were two stages, the first stage being whether it was advisable to reopen a decision at all and to commence a rehearing process; the second stage, if the answer was yes to reopening a decision, was the reconsideration process itself and whether or not the original decision should be changed. It seems to me his submission was focusing more on rules that might be made dealing with reconsideration rather than recommendation 12.

1130

**Mr Marchese:** Does any lawyer have a comment on that?

Mr McLean: This just brings me back to some of the discussion I had, when the clerk was making copies, about a case that was before the committee many years ago. The Ombudsman had ruled that there would be no further investigation into the case. As I said, Ed Philip and I were on the committee and had the case reopened; the complainant did receive funding from the Ministry of the Environment, which the complaint was against. There has to be something in there that it can be reconsidered or can be looked at if deemed there is further evidence to open it.

Unfortunately, that claim went on for about 10 years; it was finally resolved. The previous Ombudsman was very open to the discussion. We had lawyers before the committee giving evidence, and it was a major job for the Ombudsman's committee to deal with that. After the case was deemed to have been closed, we had it reopened and

the claimant did get paid. I think it's important that there's something in there that this would take place.

The Chair: So you're supportive of the recommendation.

Mr Marchese: I didn't really want to belabour it very much because I support the recommendation. I was just trying to understand Mr Ellis's points. Presumably, reconsideration would deal with the threshold question, as to whether it's advisable to reopen the decision at all. I'm assuming that governmental organizations that do not have the power now to reconsider would deal with his number 1. I'm not sure who defines the threshold, but I suspect there would be a process that every governmental organization would engage in to determine whether there's sufficient evidence to reopen a decision. Right? So I'm not quite sure what Mr Ellis is saying with respect to 1.

If the answer is yes to reopening, he says there's a stage 2, meaning the reconsideration process itself and the decision whether or not to change the original decision. I'm assuming reconsideration deals with that as well. Isn't that the case, Philip? Am I missing something?

Mr Kaye: I think his concern was just the use of the word "reconsideration."

Mr Marchese: Why is it ambiguous? I don't get it. It seems clear to me. He says it's inherently ambiguous.

The Chair: In a tribunal setting perhaps it has been considered — unless, as Mr McLean says, further evidence comes forward. Really, in that context a reconsideration would be logical if there's some new information, I think.

Mr Marchese: Anyway, I support the recommendation.

The Chair: Do you understand what I'm saying? That's how I see it. I'm asking Philip the same question.

Mr Kaye: As I mentioned, I'm a little confused about to what extent Mr Ellis's comments are directed at the recommendation itself as opposed to its implementation. It could be argued that as the recommendation is currently worded, "reconsider" has the two components, whether to reopen the decision at all and then the actual reconsideration.

Mr McLean: I believe the committee should have the say about whether it is reconsidered. Once the Ombudsman has made the decision, if there is further evidence and the complainant wants it to be heard further, the committee should make the recommendation whether they're going to hear it.

The Chair: That's a different twist entirely.

Mr McLean: It takes the onus off the Ombudsman.

Mr Parker: I'm going to suggest that we not get too hung up on semantics at this stage. This is a report we're considering, not legislation. If the fine-tuning of the wording becomes important when it becomes time to draft legislation, this will be a useful discussion at that time.

I think the principle we're driving at here is supported, regardless of the reservations as to how it might be implemented. That's another issue for another day, and I'm grateful to Mr Ellis for flagging it for us, but I don't think it's one that we need to get bogged down in right now.

The Chair: I'm going to call the question.

Mr Parker: I want to come back to Philip and just ask — you mentioned amendments to the Statutory Powers Procedure Act. Were you suggesting that because of those amendments item 12 is redundant?

Mr Kaye: Part of item 12 would be redundant. Recommendation 12 is phrased very generally; it just refers to governmental organizations. The provision in the Statutory Powers Procedure Act that gives a power of reconsideration applies to tribunals which exercise a statutory power of decision and which conduct hearings. You might say that the amendment to the Statutory Powers Procedure Act is a subcategory of what's in 12. Part of 12 would be covered by the Statutory Powers Procedure Act but not all of 12, because 12 is phrased very generally. That may help to explain the Ombudsman's comments that although these legislative changes have already taken place, the amendment provided for in recommendation 12 would be welcome.

Mr Parker: Well, I'll make the same point, that what we're talking about here is a report, not legislation, and we're dealing in matters of principle. I support the principle in item 12. We may have to look at it more precisely when it comes time to draft legislation, but I'm happy with 12 as it stands and I'm grateful for the comments that have been made on it.

Mr McLean: There is some consideration here that the wording is not appropriate, and we are amending the act and the wording. Why don't we stand it aside and get further information on how it should be worded, whether those words should be left in or left out?

Mr Marchese: I think Mr Parker's right. The principle is a good one. As to whether "reconsideration" means, as Mr Ellis is saying, 1 or 2 and has different implications, we might leave it to a later day for people who draft legislation to deal with the nuance of reconsideration as it relates to what Mr Ellis was getting at. We can deal with that another day.

The Chair: I'm going to respond in a general way before I call the question, if I may. The Ombudsman saw the wording as it is now in respect of the Statutory Powers Procedure Act — this was a welcome clarification. I gather she works with some of the nuances.

Anyway, I'm going to call the question on number 12. All those in support? That's carried.

Number 13.

Mr Kaye: Recommendation 13 deals with the kind of organizations the Ombudsman would have the authority to investigate. Currently under the Ombudsman Act, the Ombudsman may investigate the decisions or actions of any "governmental organization," which is defined very generally under the Ombudsman Act to mean "a ministry, commission or other administrative unit of the government of Ontario," including any agency.

The committee felt that the lack of clarity in defining "governmental organization" — this is in the 1993 report — led to time-consuming and costly disagreements with government bodies over whether the Ombudsman had authority to investigate them. The committee accordingly felt that the Ombudsman's jurisdiction should be more clearly defined, and it recommended that a schedule

of governmental organizations be added to the act. That is found in recommendation 13.

The Ombudsman was the only person or group to comment on recommendation 13. She felt that the current definition of "governmental organization" should be retained, but she also felt there should be provision for adding areas to the Ombudsman's jurisdiction by means of a schedule. She gave examples of the kinds of services or programs which could be added by means of a schedule — for example, if a service or program was identified for some form of private delivery — and felt that agencies delivering these services might be listed in the schedule. She gave some other examples to cover areas where the public currently doesn't have the right to complain to the Ombudsman; for example, complaints against children's aid societies, municipalities or hospitals.

Recommendation 13 does not go as far as listing specific services or agencies that should be added by means of a schedule. It simply provides that there would be a schedule for listing governmental organizations.

Mr Hoy: To recommendation 13: My notes from when the Ombudsman appeared before the committee had the concerns that you raised in terms of agencies. In particular, she mentioned jails, the privatization perhaps of some government agencies and perhaps a move to more self-regulation in the future. That was one issue she raised which has already been mentioned.

The other one was that if you're going to make a list, she was fearful that the list might omit something; that in evolving governments and ministries etc, government organizations, a list might be somewhat dangerous, I suppose, in that it might miss someone, some organization. I think there are two concerns there: The changing to private agencies delivering what traditionally might have been government organizations; and making a list that might omit the opportunity for the Ombudsman and more importantly those that are seeking recourse to approach the Ombudsman in her or his work in the future.

I'd be interested to hear what the committee has in mind on those two issues. I think they need to be addressed maybe a little more finely than what recommendation 13 now contains.

The Chair: Philip, do you have any insight? There were a couple of examples used in the Ombudsman's comments. One was children's aid societies, municipalities and public hospitals, which are apparently exempt now. Are there any other suggestions on the schedule? I understand. If we out-sourced road clearance and there was some kind of negligence or whatever, and the Ombudsman was sought, how would that be defined? Are those really the questions that I'm hearing?

Mr Hoy: Yes. I raised this issue before. We called it privatization and a change in the role of governments. I mentioned jails as one that the Ombudsman pointed out in her submission. Are we comfortable that with this recommendation 13 we're not leaving people out?

The Chair: Could we stand that down and ask the members of the committee or the researcher to come up with what was considered to be a list or a schedule?

Mr Parker: I'm not sure that's necessary, Mr Chairman. In terms of a list presenting the risk that something might be omitted, I think that's something that can be addressed in the drafting of any legislation that arises from this. I think what item 13 is getting at is that there be a general description and then, for greater clarity, the option of including specific items in a list, but it wouldn't necessarily mean that the category is restricted to the agencies included in the list. The list is just a means of adding greater particularity to a general category. I think that concern can be addressed in the drafting of any legislation that arises. I appreciate the point that's made but I'm not sure it's anything that needs to concern us at this stage.

On the other point, about private agencies that might carry out government policy, I think that is a much larger issue and falls outside the scope of the exercise we're in now. I recommend we leave that for another day.

Mr Marchese: Philip, I thought the Ombudsman was agreeing to a schedule. Is that not correct?

Mr Kaye: Yes, she's agreeing to the current definition

in the Ombudsman Act plus a schedule.

Mr Marchese: Right. The other disagreement she has is that the way we word it in the first paragraph is limiting and that she would prefer, as I read her remarks, that we keep the generality of the current language. If we include the first paragraph in recommendation 13 it's limiting, in her opinion. Is that correct?

Mr Kaye: That may be what she's saying. I think part of the confusion may come from the wording of recommendation 13. Is recommendation 13 saying to eliminate the current definition of "governmental organization" and only have the schedule, or is recommendation 13 saying there should be the schedule plus the general definition of governmental organization which currently exists?

Mr Marchese: If you don't mind, Mr Parker and Mr Chair, I wouldn't mind standing this down, because I think it's useful to look at this again.

Mr Parker: I'm happy to stand it down.

The Chair: All those who support that we stand it down? Is the direction to the researcher here? Mr

McLean, did you want to speak first?

Mr McLean: Yes, I did. I feel that the jurisdiction that she has now and the area that she covers with regard to the governmental organizations — if you talk to any municipality, they would not be happy to have their name added to any list. I know that, as others would. She's asking to broaden the right of complaint and I'm not so sure I agree with that. I think the terms of reference she's dealing with now have been sufficient and I don't agree with adding any more to them. The other possibilities for inclusion in the schedule are the areas that she wants to include in a schedule. I don't agree that these others should be included in that schedule.

Mr Marchese: Just briefly in terms of the scope of the schedule, we always have a concern around whether once you have a schedule that's the end of it or whether it's an evolving schedule, and the difficulty of that schedule being revised over time or how easy it is to revise over time. It is I think within our jurisdiction to worry about that as opposed to leaving it to some point down the line. We need to talk about it here as a way of directing the

Assembly with our concerns, rather than saying somebody else may or may not look at it and we have to bring it back for reconsideration. The scope of it and how we deal with that is a matter I would like to discuss.

In terms of Mr McLean's comments, it's possible that many municipalities may not want to be included. I probably understand that. I may not agree, but I'm concerned about the fact that some of these municipalities do not have a mechanism in place to deal with a particular problem somebody's having. Where do they go, and wouldn't it be nice to have an Ombudsman's office? It is costly if you expand its jurisdictional power, but I would love to be able to extend the powers of the Ombudsman to municipalities as well. It's a difficult issue.

Mr Kaye: When the committee made recommendation 13 it really wasn't looking at the question of expanding the office's jurisdiction to include such bodies as municipalities, children's aid societies or public hospitals. In fact the committee, in the 1993 report, dealt separately with such an expansion of jurisdiction of the Ombudsman, except the committee did not make any formal recommendation in that regard. So none of the 44 recommendations addressed that particular issue.

The Chair: Did Bill 80 mention anything on this section with respect to schedule? It seems to me that there must be language that would be sure to include — once you get into a list, you've got the potential of keeping that list up to date and then arguing whether it's on or off the list. There must be some other kind of language way of saying anyone accessing some government service by whatever means.

**Mr Parker:** There's no reference to Bill 80 in the 1993 report.

The Chair: I didn't see any of that.

Mr Hoy: Just briefly, I wasn't in my prior comments suggesting that municipalities and hospitals be included on a list or not included on a list. My point was that as the government's delivery, we'll say, of certain traditional governmental organizations' work changes, the Ombudsman raised a question as to whether they would be included, traditional governmental organizations as we know them today. I wasn't suggesting that we add or delete municipalities and public hospitals. I was thinking of what is now known to be the current list.

The Chair: I think we've got general consensus that we're going to stand this down with some direction to the researcher to clarify what would be intended by a list. Would it be to expand the mandate or to clarify the mandate? Do you understand what we're asking, Philip?

Mr Parker: I don't think it's appropriate to give that task to the researcher. The question is, what does this committee want to do? I still think it's a good idea to stand the matter down, but I don't think there's any homework for the researcher out of this. I think there's homework on the part of each member on this so that we can come back and discuss it more fully at another date.

The Chair: My direction there would be not to do anything more than help us to move the next time, otherwise we'll stay on this topic if you think there's something specific you can offer now, Mr Parker, to clarification. I don't think we're very far from resolving making this recommendation to the committee. I agree

the language can be finessed by the legislators who draft the real amendments to the Ombudsman Act, but I kind of hear subtly here that maybe we would include children's aids, maybe we would include municipalities and hospitals. Or what is the excluded list today? I don't know what it is.

Mr Parker: My point to you, Mr Chairman, is that the determination of that issue isn't a matter it is fair to ask the researcher to guide us on. That's a matter each member of the committee has to put some thought into and then come prepared to discuss. But I don't see how the researcher can usefully guide us and I don't see that it's fair to ask him to pursue that question. I think it's right that we set the matter down and that we discuss it another day, but I don't see any homework on the part of the researcher arising out of this.

**The Chair:** The researcher has no duties at all here. We each have some duties.

Mr Parker: The researcher has enough to do without —

Mr Jean-Marc Lalonde (Prescott and Russell): I don't think she ever meant that she should be taking a look at municipal complaints. I think what she referred to when she mentioned municipalities is the fact that probably municipalities should have their own Ombudsman similar to the insurance companies, which have their own Ombudsman at the present time.

I thought she was clear when she said she will only handle complaints that have some reference to the provincial government. Even though they get some grants from the provincial government, she would not handle any complaint that reflects municipal affairs.

Mr McLean: On that point, many years ago the Ombudsman, and I believe I'm correct in saying this, wanted these jurisdictions under their wing. The committee at that time was not in favour of it, and that's why she is saying there are possibilities for these to be included, which I don't agree with.

Mr Parker: I want to move that we stand the matter

down and proceed with the next item.

The Chair: Yes, and I guess for consideration for the next time, for expeditious reasons, give it some thought. I don't know exactly what that means, but I think we could solve it now. You can stand it down. It's one minute to 12 and I suspect that I'm looking for someone to —

Mr McLean: I move adjournment. The Chair: I have a motion to adjourn.

Mr Parker: Why don't we just see if there's any discussion on 14 and 15, because maybe we can —

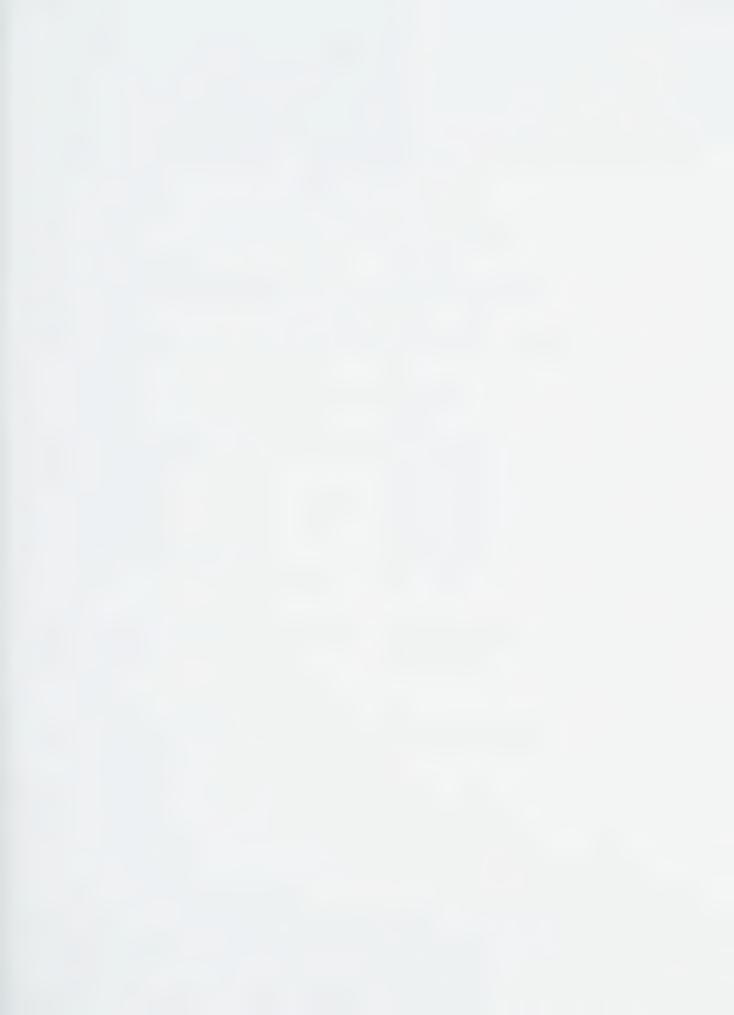
The Chair: Is that nice round number for somebody? It's fine with me. Let's see if we can, quickly. Number 13 is stood down. Number 14: Philip, is there any great — plus there are all kinds of comments.

Mr Kaye: Number 14 was considered to be a very significant recommendation by the Ombudsman and there

were extensive comments made.

The Chair: I think we'll adjourn now because 14 is like the dividing point. We will reconvene next week and you'll all be duly notified.

The committee adjourned at 1155.



# **CONTENTS**

# Wednesday 11 June 1997

Review of the Office of the O	mbudsman			
STANDING COMMITTEE ON THE OMBUDSMAN				
Chair / Président:	Mr John O'Toole (Durham East / -Est PC)			
Vice-Chair / Vice-Président:	Mr Trevor Pettit (Hamilton Mountain PC)			
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Mr Bruce	Crozier (Essex South / -Sud L)			
Mr Pat	Hoy (Essex-Kent L)			
Mr Ron	Johnson (Brantford PC)			
Mr Jean-Marc	Lalonde (Prescott and Russell / Prescott et Russell L)			
Mr Gary L.	Leadston (Kitchener-Wilmot PC)			
Mr Rosario	Marchese (Fort York ND)			
Mr Allan K.	McLean (Simcoe East / -Est PC)			
Mr Bill	Murdoch (Grey-Owen Sound PC)			
Mr John R.	O'Toole (Durham East / -Est PC)			
Mr Jerry J.	Ouellette (Oshawa PC)			
Mr John L.	Parker (York East / -Est PC)			
Mr Trevor	Pettit (Hamilton Mountain PC)			
Mr Len	Wood (Cochrane North / -Nord ND)			
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Standing committee on the Ombudsman

Review of the Ombudsman

# Assemblée législative de l'Ontario

Première session, 36e législature

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Mercredi 18 juin 1997

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman



Chair: John R. O'Toole Clerk: Franco Carrozza Président : John R. O'Toole Greffier : Franco Carrozza

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# LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 18 June 1997

# ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 18 juin 1997

The committee met at 1010 in room 151.

# REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John R. O'Toole): I call the meeting of the Ombudsman committee to order. Our regular researcher, for personal reasons, is unable to attend this morning's meeting, but we have Andrew McNaught, who has some background in this area and is willing to labour with us through the recommendations this morning.

Are there any comments before we start? We're just going to pick up where we left off. I believe we were at recommendation 13, just about to do 14 when we adjourned last time. If that's satisfactory -

Mr Allan K. McLean (Simcoe East): I just have a short question for the clerk. When do we get, or have we already got, the Hansard for last week's meeting? How

long does it take to get the Hansard? Is it a week or two weeks?

Clerk of the Committee (Mr Franco Carrozza): It's close to a week, because a number of committees have priority over us: the resources committee. If you wish to have a rough copy -

Mr McLean: I've got that, but I was wondering when

Clerk of the Committee: The actual is about two to

three days at the least, a week at the most.

The Chair: What we have been doing, so everyone is familiar, is that we've been stating the recommendation we are addressing, asking the members to read it and the researcher to give us a bit of a background sketch of the recommendation and how it arrived here. Andrew, if you have a problem with that -

Mr Andrew McNaught: I'm afraid I can't really tell

you what the witnesses have said.

Mr John L. Parker (York East): What we were doing was going through the recommendations of the 1993 report in order, and as recommendations arose on which there were comments in the recent round of public consultations, I made the request that the researcher refresh our memory about what submissions had been made during the public consultations. Andrew, I think you've got the summary.

Mr McNaught: I've got the summary. I wasn't present

for the hearings.

Mr Parker: If you could just use that as your guide,

I think that's as useful as anything.

The Chair: We are on 14, and is one of those where there were comments from other contributors, page 10 of the March 1997 report. Page 9 is actually where recommendation 14 is, but the comments are continued on the

next page. "Investigating Decisions of Administrative Tribunals."

Mr Parker: I'm sorry, Mr Chairman. What number is this one?

The Chair: It is number 14.

Mr Gary L. Leadston (Kitchener-Wilmot): Number 13 was deferred.

Mr Rosario Marchese (Fort York): There were a number of comments made by a number of people. Perhaps we can just allow a minute to review.

The Chair: Yes. Andrew is getting up to speed. The Ombudsman made a comment, the public protector made a comment, and seven provincial ombudsmen made a comment, as well as Mr Ellis from WCAT. Page 10 is pretty much dedicated to that, if you want to have a look

at it. Any comments?

Mr McLean: I have a comment. With "Seven Provincial Ombudsmen" it says, "The committee should neither be, nor perceived to be, directing the Office of the Ombudsman." Are they saying we shouldn't oversee the office, that we shouldn't have a tour to see what's going on there? Is that saying we should just stay away from the Ombudsman's office and let her run it? What are the seven ombudsmen saying? What's the definition, in your opinion?

The Chair: The clerk of the committee has just referred me to the terms of reference of the standing committee. I suspect we all have this in our materials. In this section it says, "To formulate general rules for the guidance of the Ombudsman in the exercise or his or her function under the act." That's what's in the terms of reference. You're touching on the very essence of why this 1993 all-committee report went forward and is back here. It's the very issue.

Mr McLean: Read that again.

The Chair: Under the terms of reference, subsection 15(1) says, "To formulate general rules for the guidance of the Ombudsman in the exercise of his or her function under the act."

Mr McLean: In order to formulate those rules, we have to know what is going on within the office, and the ombudsmen are recommending that the committee "neither be, nor perceived to be, directing the Office of the Ombudsman.'

The Chair: Any further comments on that? That's the subtlety. That's the very language balance we are dealing with in all these recommendations.

Mr Pat Hoy (Essex-Kent): At our last meeting, I believe I mentioned that the Ombudsman currently looks at the process of tribunal decisions but does not get involved in the actual decision itself, whether it was argued that someone didn't like the decision - she

doesn't look into that aspect of it. The current Ombudsman said she does look into whether the tribunal process was handled correctly, but she is not a court of appeal as to how the tribunal ruled. The ruling part of it is something the current Ombudsman doesn't get involved in.

I suppose in general terms, the need for rules is only to solidify that particular point of view that only the process be looked at by the Ombudsman. I'm not certain the committee wants to change that rule to where we would have the Ombudsman look into the actual decision by a tribunal. I don't think that's the intent of this recommendation brought forth in 1993.

The Chair: I tend to concur. Even in the section Mr McLean has made reference to, there's a difference between — the role of this committee is more of a guidance role on the rules, not specific to cases. But in the comments from the ombudsmen, it says "directing the office." I don't think it's the role of this committee to direct where to spend and allocate resources. I believe it's looking at, as you said, Mr Hoy, a process and whether the process has been followed, without specific reference to cases.

If anyone has a difficulty with that, if you go back to recommendation 14, it says, "That the committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of tribunal decisions." This is very specific about the decision. Any comments?

Mr Leadston: I'm assuming there's a similar process within the Office of the Ombudsman in other jurisdictions. Are we reinventing the wheel here? In another jurisdiction, they already have a set process in place. Are we altering that, adding to that, deleting it?

The Chair: I refer you back to the comments in the March report by the seven provincial ombudsmen responding to exactly your inquiry. They say it's the balance between the principle of accountability versus the principle of directing, meaning the role of this committee.

Mr Parker: I see recommendation 14 as putting forward a question but I don't see it as purporting to answer that question. I appreciate the cautions that have been raised in respect of the issue that recommendation 14 addresses, but I see no danger in adopting recommendation 14 in its present form. As the question recommendation 14 raises is further pursued, perhaps at another time, the cautions that have been raised in the course of this process might well be kept in mind.

To summarize my comments, I appreciate the cautions that have been raised. I don't see that they need to deter us from passing recommendation 14 in its current form.

Mr Marchese: I'm very conscious of what a number of these people have said and very concerned about what they've said. I was interested in listening to Mr Parker's comments. It is true that 14 raises a question about whether there is a need to formulate it. It doesn't say we will or that we should, but rather, whether we need to formulate those rules. I suppose if we ever make that decision we need to take into account what a number of people have said, which concerns me.

Because of what a number of people have said, I was almost tempted to say I'm in disagreement with the recommendation that was made in 1993, but I suppose I'm comfortable with the idea of leaving it as a recommendation which asks us as a committee to look at whether there is a need to do so. If we look at that in the context of what other people have said, perhaps we may not do anything in the end, that's true, but it leaves it a bit open.

The Chair: It's sort of a circular question. I sense an agreement, because it really just raises the question. Page 47 in the original report touches on all the points that have been made here. I'm going to call the question on recommendation 14. It raises the question, as Mr Parker and Mr Marchese said. It does not direct a new action by the Ombudsman's office. All those in support of recommendation 14? That's carried.

Mr Parker: Mr Chair, I didn't call for a recorded vote on that, but I think it's fair to note that that was passed unanimously.

**The Chair:** A unanimous vote, yes. I'm recording that as an unanimous vote in favour on 14; there were no dissenting votes.

Number 15: Andrew, could you lead us through this, a less controversial recommendation, I think.

Mr McNaught: I'm reading this for the first time.

The Chair: No problem. Everyone, I encourage you to read recommendation 15, the thrust being that the act be amended to provide that the Ombudsman does not have the jurisdiction to review cabinet decisions. Any questions, comments? I'll call the question. All those in support? That's carried unanimously.

Number 16.

Mr McLean: Mr Chair, with regard to the expansion of jurisdiction, which is on page 11 — I believe that's recommendation 13 — did we deal with that?

The Chair: No, we didn't. Recommendation 13 was set aside.

We're dealing with 16. As you're reading there, the recommendation should be turned into a formal recommendation; at this point it isn't, I gather. Any questions or comments on 16? Seeing none, I'll call the question. All those in support? That's unanimous.

Moving right along to number 17.

**Mr Parker:** Mr Chair, to make it simple, can I just put forward a standing request that all votes be recorded votes? Then we can just go through them very cleanly.

The Chair: Does that mean we have to name every member here?

Mr Marchese: Yes, we do.

The Chair: Is that looking for unanimous consent?

**Mr Hoy:** We have a number of these to go through. Rather than record each vote, would it be acceptable to say whether it was unanimous or not?

The Chair: And list the names of the members who are in attendance —

**Mr Hoy:** Rather than naming each member here through some 40 —

Mr Marchese: I don't mind naming them each time.

The Chair: Mr Hoy has recommended that the names of the members in attendance are recorded and that each vote will be considered a recorded vote, noting any abstentions, so we don't have to read it every time. Okay?

**Mr McLean:** Why is it so important on these recommendations that we have a recorded vote?

The Chair: I think the intention is that we do want a unanimous report. We want a report to go forward from this committee to the Legislature that respects the input from all three parties.

Mr Trevor Pettit (Hamilton Mountain): Mr Chair, I don't think. Mr Hoy was suggested a recorded vote, just the fact that it was unanimous, so we don't have to do it each time.

Mr Marchese: Mr Parker wants it to be on the record so that in the future he can say, "Mr Marchese also said, on a recorded vote, that he agreed with this," so that in the event something happened he would have that on the record. I think that's what he wants.

Mr Parker: Rosario, I appreciate the help, but no, it's not so much that. I think it's important that the public be confident that the decisions being made by this committee have the full support of all three caucuses present.

Mr Marchese: I agree with that. The point is that if I vote for something, whether it's on the record or not, you would not find me backing away from something I agreed to. That's just for the record, so that he knows and the other members know.

Mr Parker: I would never want to suggest otherwise. If there's anything I will say about Mr Marchese, it's that he's a man of integrity. I wouldn't expect him to back away from any vote he made.

The Chair: I believe all honourable members here are men of integrity.

Interjections.

The Chair: I'd like to bring the meeting back to order. Mr Parker: Mr Chair, I just want to make this point clear. I wouldn't want the suggestion to be left out there that I was trying to get anyone on the hook so that they couldn't wiggle off. It's simply to give the public the confidence of knowing who supported these recommendations and who didn't. So far, the recommendations have had the support of all three parties, and I think that's important for the public to know.

The Chair: Thank you for those comments. We're looking now at recommendation 17, that the Ombudsman Act be amended to — you can read that. All those in support? That's carried unanimously.

Number 18.

Mr Marchese: Just give us a second, Mr Chair, so we can refer to —

The Chair: Yes, because it does make reference to another recommendation.

Mr Marchese: This is where there's some considerable controversy, I suspect, right?

The Chair: That could be the impression.

Mr Marchese: In recommendation 44, there are comments about "monitoring and reviewing the Ombudsman's exercise of his or her functions," and when we get to recommendation 44, there was probably some disagreement with that. Could we stand that down for a moment?

Mr Parker: Actually, I think consideration of number 18 is premature until we've reviewed 44, and there will be some discussion around 44.

**The Chair:** Postpone number 18? Is that unanimous? Agreed unanimously.

We're on number 19. It's just clarifying the role of this committee. All those in support of recommendation 19? That's unanimous.

Number 20, the appointment process.

Mr Parker: Mr Chair, this committee has recommended a revision to the recommendation contained in the 1993 report. It's important that the members look at it. I'm going to ask that we review the recommended revision, which is in the working paper.

The Chair: Yes, we're looking at this paper now, the working paper, at the revision. I would ask our researcher

to read this into the record so we're clear.

Mr McNaught: The revised recommendation reads: "That section 3 of the Ombudsman Act be amended to provide that the Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the assembly only after a recommendation by a majority of the members of the standing committee on the Ombudsman. Such majority shall include at least one member from each official party in the assembly."

The Chair: So each party would have to participate

and support the Ombudsman's appointment.

Mr McLean: That's what happens in most cases, with the people who are appointed as commissioners around here. As a matter of fact, it's being done right now with regard to the commissioner on privacy. A member from each party and the Speaker are dealing with that recommendation, and that's what I see is happening here. It's going to have to be a member from each party plus the Speaker who will make a recommendation. There are about six or seven commissioners in the province who are under the Office of the Speaker.

The Chair: As long as a member from each party and the Speaker agree, that's how the appointment is formalized.

Mr Parker: But this doesn't say anything about the Speaker.

**The Chair:** No. It is the committee, though, in this case here.

Clerk of the Committee: If I might assist the committee, when the Provincial Auditor was retained for the job, the public accounts committee conducted all the interviews in camera and made their decision. The committee did all the work and then, when they were in agreement, they made their recommendation. I think this revision is following in those footsteps.

**Mr Parker:** I think that's the understanding we all have.

The Chair: Do we have unanimous agreement on that? Mr Pettit: I just want to clarify, Mr Chair. If they're voting on this and there is a majority, there must be one vote from each party.

The Chair: Right.

**Mr Pettit:** Now, if you have a majority vote and there's not, then what?

The Chair: According to this definition, that would not be acceptable.

All those in support? I'll call the question. Carried unanimously. That's recommendation 20 in its revised

Recommendation 21, term of office: This is changing it from 10 to six.

Mr Hoy: You're quite right, Chair, that it does change the term of office from 10 years to six. However, I think it's important to note that the six years, as pointed out by the Ombudsman, would exceed the length of any given government. Even though we've reduced it from 10 to six, it is not five years. Traditionally, many governments have chosen to have elections in four years. Notwithstanding that, this does exceed the five-year term of any particular government of the day, and it's important to note that as we look at this recommendation.

The Chair: I think that's well explained.

Mr Parker: I appreciate that. I think it's also important to note that in a survey of the practice in other provinces it was found that of the seven other provinces which have ombudsmen, six have a term of office of either five or six years. Only one other province, that being New Brunswick, has a term of 10 years. If Ontario were to adopt a six-year term, we would be at the upper end of most of the provinces. As Mr Hoy points out, that six-year term would extend beyond the term of any one government. I think that's critical.

Mr Marchese: Six years provides a great deal of continuity in the office, and it is important that it be beyond the term of any one government, absolutely. In most of the appointments we make of people to government agencies, it's three years and then they are renewed for another three. Six years, in my view, is quite appropriate. I think there's agreement.

The Chair: It's good to hear unanimous agreement.

I'll call the question. All those in support?

Mr McLean: Can I have a clarification before you call the question? Ellis commented about "a substantial separation at the end of the term (in the order of two years of salary and benefits) to ensure independence." We're not looking at that at all? That's just an observation of what Ellis has made?

The Chair: Yes, that's not the tenor today. All those in support? That's unanimous.

Recommendation 22, that 4(2) of the act be removed: Does anyone have the act with them? It talked about removing -

Mr Parker: Mandatory retirement at age 65, Mr Chairman. The proposal is to remove that requirement.

Mr Marchese: That the person retire at age 65. The recommendation is that that be removed.

Mr Parker: That's right. The current act requires that the Ombudsman retire upon reaching age 65. The proposal before us is to remove that requirement.

The Chair: I would ask the clerk to give us his

impressions.

Clerk of the Committee: The original discussion in 1993 was that there was a body of knowledge there, that former judges who retire after 68 were not considered for the job because of this particular section of the act. Their thinking was, why exclude this knowledge accumulated over the years, which could be used? That was the idea.

Mr Marchese: That's an interesting argument. That can apply to any group of people, like teachers, for example, who are required by the Education Act, or at least by the boards, to retire at age 65. You would think they have acquired such a great body of knowledge and experience that we should allow teachers to stay as long as they want or as long as they're able to. If we applied that logic it could extend to every human being in every job. It's a bit of a problem, right? Maybe Mr Parker has another view on this.

Mr Parker: I think the comments of Mr Ellis that Mr McLean just referred to are also instructive on this point. He made the point, "A fixed-term appointment, however long, does not provide anything but an illusion of independence." He goes on to say that if you have a young Ombudsman, towards the end of the Ombudsman's term. the concern about future employment begins to loom inevitably on one's mind. He raised the question whether that might distract the Ombudsman from the responsibilities of carrying out the office. He posed the question of what effect that might have on the independence of the Ombudsman and the full concentration of the Ombudsman on the job at hand.

1040

But if you were to have as Ombudsman a retired judge, for example, you wouldn't necessarily have a concern about what happens next, because the judge might very naturally step into retirement at the end of the Ombudsman's term and would therefore be more inclined to give full concentration to the Office of the Ombudsman during the term. That was the point that was made by Mr Ellis, and I think that's one that's worth keeping in mind as we look at recommendation 22.

Mr Marchese: His comments were in relation to the duration, that was the six-year term, but you're applying that to retirement as well. Is that what you're doing?

Mr Parker: I'm taking his point, wherever it was made. He linked it to recommendation 21, but I think it's a point that is instructive to us as we consider recommendation 22.

Mr Marchese: My point is that this leads to a lot of other problems of a general policy nature in terms of how one deals with these things. If it applies here, it should apply in so many other areas. How does this contradict anything else we have in place with other agencies or commissions or anything we have with respect to people who work for us in government offices? This may set a precedent and lead to a problem elsewhere. Have people thought of that?

I'm concerned we haven't spent too much time reflecting on this. We're dealing with this issue in isolation, saying, "If someone is 65, a very able man or woman, why would we have them retire, given that they have such a great deal of historical experience on the topic?" It does lead to other questions which I think are a bit

The Chair: We're getting in a circuit here. I'm going to accept two or three more questions. Mr Hoy, would you like to make a comment? Mr Johnson, do you wish

Mr Ron Johnson (Brantford): No, I'm fine.

The Chair: Anyone else?

Mr Ron Johnson: In fact I will. Maybe I need some clarification on this. With the mandatory retirement at 65, how would you appoint an individual at, say, the age of 62, to six years?

The Chair: I think that would be discussed by the

committee and the applicant.

Mr Ron Johnson: My point is that that would seem to be logical justification for dropping the mandatory 65. The example Mr Marchese is using, ie, a teacher, isn't appointed for a mandatory term. You can't appoint one to a mandatory term of six years if you have an age restriction that would limit that.

The Chair: Mr Johnson, I'm going to allow the researcher, who is in possession of the act, to clarify. It's

a good point but it is addressed within the act.

Mr McNaught: Subsection 4(2) currently provides that the Ombudsman must retire at 65, but where the Ombudsman attains the age of 65 before having served the five years in office, he or she can retire upon serving the full five years. You're allowed to sit beyond 65.

Mr Ron Johnson: If you're allowed to sit beyond the age of 65, why the need for this recommendation?

**Mr McNaught:** That's only where you reach the age of 65 before your term is completed.

Mr Marchese: This recommendation removes the age

duration altogether.

Mr Jerry J. Ouellette (Oshawa): I agree that we should remove the age restriction, but in no way feel that the submission by Mr Ellis is the one reason. At what age did the Integrity Commissioner recently retire?

Interjection.

The Chair: Justice Evans is quite senior in age.

Mr Ouellette: That's a perfect example of a function within government that is somewhat similar.

Mr Parker: On the Integrity Commissioner, don't the rules say he is not allowed to retire?

Mr Pettit: If we don't remove it, it opens the door for someone to be appointed at 64 years and six months.

The Chair: But it goes right back to the same point Mr Marchese has been making.

Mr Leadston: It should apply to politicians too.

**The Chair:** That's the very point Mr Marchese is making: Why restrict it to this office?

Mr Parker: I think we're all agreeing, maybe for different reasons. I hear everyone saying the same thing at the end of the day, which is that we want the restriction removed.

Mr Marchese: I didn't say that. I'm very concerned. I will support it, but that's for the record. Maybe when we have the debate in the House on some these things, others might have concerns around this too.

The present act, in my view, isn't so bad. If a person is 62 or 63, and is now in the future going to have a six-year term and ends up being 68 by the end of it, for that kind of qualification it isn't so bad, because that kind of condition seems to fit and it makes sense.

But others will argue that different circumstances can make sense for different people in other areas as well. Although we build in the condition as to why this makes sense, others can argue, "Here's my case and I need to go beyond age 65 for a couple of months." People have

argued: "The rules say you can't. We know it's important for you to continue for another five months, for whatever reason, but you can't." I'm very concerned about this.

The present act seems to cover it for me, whereas what we're doing is a problem in terms of a policy direction. I think we all need to be reminded of what it opens up. I don't mind supporting it to move this along for the debate in the assembly, but I have serious concerns about the implications.

The Chair: We've had a full discussion. I'm going to ask everyone to vote at this point. We're looking at recommendation 22. All those in support? That's carried

unanimously.

**Mr Parker:** Mr Chairman, could I move at this point that Mr Johnson having spoken, the Hansard from today's proceedings be copied and made available to the office of the government whip?

The Chair: I'm not going to respect that comment. I think it's nice and humorous. The Chair reserves the right

to editorialize here.

Mr Marchese: It's an important motion. Are you moving it seriously, Mr Parker? I just want to know.

**Mr Parker:** I'm happy to defer that motion to another day.

The Chair: It's not within the context of this particular agenda.

Mr Ron Johnson: I'll sit idly by and take it. I'm

bigger than that.

**The Chair:** Recommendation 23: We have before us another important recommendation. It's regarding the funding. This is quite an important recommendation for the functioning of this committee.

Mr McLean: The public accounts committee reviews the auditor and reviews other government agencies involved with the assembly. Is that correct?

The Chair: No, that's not exactly correct.

**Mr McLean:** Maybe the researcher would brief me on that.

The Chair: The clerk has sat through this deliberation. Clerk of the Committee: At present, all the estimates of all the ministries are placed before the standing committee on estimates. The standing committee on estimates makes a decision on whom they choose to hear. If they do not choose the Provincial Auditor or the Ombudsman or the Legislative Assembly, all those remaining estimates are reported back to the Legislature. There are priorities set by all three parties on whom they wish to review. For the last few years, the Ombudsman's or the Provincial Auditor's estimates have not been called before that committee.

1050

Mr McLean: That's correct, but my question was, does the public accounts committee not deal with certain agencies in public accounts to review the functioning of that agency? Does the auditor not go before the public accounts?

Clerk of the Committee: The Provincial Auditor is a part of the public accounts committee. He's present there every meeting to give advice on all the issues brought before the committee. Yes, he is present there.

Mr McLean: So he does audit the Ombudsman, the privacy commissioner, all those? Does he not take those

before the public accounts committee so they have input into that?

Clerk of the Committee: No. As I stated, Mr McLean, all the estimates go before the standing committee on estimates. To my knowledge, the public accounts committee does not review the public accounts of the Ombudsman.

Mr McLean: No, but do they review other agencies, such as the privacy commissioner? Who reviews the Integrity Commissioner's budget? Nobody?

The Chair: We need a clarification of what goes to the estimates and how they select, and also what goes to public accounts and how that is determined. I am going to ask the researcher, who is looking at the 1993 report, to make some reference to that process.

Mr McNaught: I just note in the discussion of this issue in the 1993 report, it states that the Ombudsman and other officers of the Legislature present their estimates to the assembly's Board of Internal Economy, whose responsibility it is to review and approve those estimates and then to lay them before the assembly. These estimates, like government estimates, are then referred to the estimates committee for further review. I don't know to what extent the Provincial Auditor gets involved beyond that.

The Chair: Let's go back to the recommendation at hand. The recommendation we're looking at, number 23, clearly determines that the standing committee of the Ombudsman would review the estimates.

Mr Marchese: I support this recommendation. I really believe it's important for this committee, which has the function of dealing with all aspects of the Ombudsman's office, that this be one area we review. I can't understand why we wouldn't be doing that.

The Chair: Excellent point.

Mr Marchese: I heard the Ombudsman's remarks and I read her remarks here, but it is our function as a committee to do this. To take that responsibility away from us or for us not to have it is to reduce the importance this committee should have. If we can't do that, one often questions what it is we can do. I've never had any problems with this recommendation.

Mr Pettit: I appreciate what Mr Marchese just said. If the Ombudsman's office determines, let's say, that they need a 10% hike in their budget, to whom do they take that to get that approval at this point in time?

The Chair: The Board of Internal Economy.

Mr Pettit: The estimates is really just a Q and A session. They don't have any power to give her office more money or take money away or anything. Is that not correct too?

The Chair: My experience, if I may answer, is that the estimates committee goes through program spending. It gives the members of the committee an opportunity to understand the allocation of resources by the ministry and the business plan, if you will, where they're putting their —

Mr Pettit: But they don't come out and say, "We think you should chop 15% from this or 12% from that." They could say that, but it's not likely to happen through the estimates committee.

On the other hand, getting back to Mr Marchese's point, are we informed enough as committee members that we would be able to sit down — are we going to be asked to set the budget for that office? Are we well informed enough to be able to do that?

The Chair: That's not what's happening here.

Mr Pettit: It's not?

The Chair: No. The budget would be set and we would be going through that process. I'm going to let Mr Parker, who's got quite a bit of experience with some of these recommendations, comment. I also draw your attention, while we're talking, to recommendation 24, which expands on 23. Recommendation 24 is related.

Mr Parker: I'll keep my remarks brief. I respect the concern that the Ombudsman has raised in respect of this recommendation. It's an important concern and one that must be on our minds at all times, and that is the need to preserve the independence of the Ombudsman's office. There is another concern that must also be on our minds, and that is public accountability. There's a balance that must be struck respecting those two concerns.

This issue was canvassed very effectively in the body of the 1993 report, and I take some direction from its observations. It makes the point that if we are to rely on the Board of Internal Economy to provide accountability, we are giving an unusual degree of authority to the governing party, because the governing party dominates the Board of Internal Economy.

The point seems to be made in the 1993 report that that isn't a real concern as far as independence is concerned, because the Board of Internal Economy doesn't get too deeply involved in the Ombudsman's finances and therefore there isn't the degree of government interference that could theoretically arise. If that is the case, however, then there is some lack of accountability.

The report then looks at the estimates committee and says, "The estimates committee has the authority to review the Ombudsman's estimates." The report then makes the observation that while the estimates committee has the authority to look at whatever it wants to look at, in fact it zeroes in on three areas each year, and as a practical matter it's not going to get around to looking in great depth at the Ombudsman's budget. Although the mechanism is there, it's one that isn't used.

The concern then left for us to consider is, who is looking out for the issue of accountability? The recommendation that the 1993 report came forward with is that this committee is the best body to provide that mechanism of accountability.

I recognize that there is a concern regarding independence. I don't know that independence is necessarily compromised as a result of accountability or that it's compromised by accountability through the mechanism of this committee. I think that's a concern that should be on the minds of the members of this committee as it exercises its duties. But after reviewing all the arguments on all sides of this, I am satisfied that the recommendation that was made in the 1993 report was a good one, that this committee provide the mechanism by which accountability is achieved on matters regarding the Ombudsman's budget. We should keep in mind the concern about

independence, but that is not a reason why this committee cannot be used to provide accountability as well.

Mr Marchese: On the two issues of independence and accountability, in my mind, the issue of independence is no less compromised were the Ombudsman to go in front of the Board of Internal Economy versus coming in front of this committee. Presumably, the issue of independence is equally compromised by them, the Board of Internal Economy, or us.

It doesn't matter who does it in that respect, because we both perform the same functions in a way, it seems to me. The government controls the Board of Internal Economy, the Speaker being present, of course, but the government controls this committee as well. One could argue that it doesn't matter where you go in terms of who is in charge, because the government is in charge everywhere in this respect.

The point is, should accountability be to this committee or to the Board of Internal Economy? That's where I think we have agreement. That is, we are the ones charged with the responsibility, in many ways, to be helpful to the Ombudsman and to be critical when we need to be. This is the committee that should be doing it. 1100

The Chair: You make a very good point. I just want to summarize, before I recognize two other speakers, that most of what you say, Mr Marchese, in my view is exactly right. It's the whole idea of independence which is inherent in the whole definition of the Ombudsman's role; accountability. But I draw to your attention as well that this committee — and all the committees are represented by all parties. In that respect they're public. In fact, this session and this debate is public record.

So the points you make — it is government in the public sense, meaning we happen to form the majority, but in that respect we're still accountable to some public observation of the process, as should be the Ombudsman. I think we agree.

I'm going to recognize Mr Pettit and then Mr Ouellette.

Mr Pettit: I just want to clarify. On 24, the second paragraph says that, "The act be amended to provide that the committee shall review and, as it considers proper, alter the estimates presented by the Ombudsman and cause the estimates, as altered, to be laid before the assembly."

You can correct me if I'm wrong, but that means to me that if he or she brings their budget in here, we can up it or down it as we see fit. You indicated before you didn't think so, but I think that's quite clear. If she comes in and says she needs \$1 million this year and we determine she only needs \$800,000, we can do that. We control her budget under 24 or at least have the —

**The Chair:** There are two points. We're dealing with recommendation 23 —

Mr Pettit: Right. But in 24, paragraph —

The Chair: On its own, we're saying there should be a review: by whom?

Interjection: Real control.

The Chair: Now, 24 is another issue. It's an extension of that. Your point suggests that the committee has the power to alter—

Mr Pettit: That's what it says.

The Chair: We're going to deal with that particular word in a minute. We're trying to get a conclusion on 23, which is dealing with: Should this committee, in its definition and terms, review the estimates? That's where we are. Mr Ouellette would like to make a point. Then I'm going to call the vote on this.

Mr Ouellette: Go ahead and call the vote.

**The Chair:** I would call the vote on 23. There will be more discussion on 24.

Mr Parker: Just one further point that I think bears being made at this point: Currently the review of the Ombudsman's budget is through the Board of Internal Economy. I failed to make the point, and I think it's important to make the point, that the Board of Internal Economy has three cabinet ministers on it, whereas this committee is strictly backbenchers. I think that's an important element. Right now there are cabinet ministers who stand in a position to review the Ombudsman's estimates. If we proceed with recommendation 23, we take that authority away from the cabinet ministers and put it in the hands of this committee which is composed strictly of backbenchers.

The Chair: I would ask for clarification on that, if this would pre-empt the Board of Internal Economy's role. It's trying to say rather than going from the Board of Internal Economy to the estimates or public accounts committee, it would go to this committee. If I could ask the clerk for clarification.

**Mr Parker:** That's a fair point.

The Chair: Wouldn't you say that it would still go to the — because you make a very good point.

Clerk of the Committee: I think you're talking here about the estimates, the complete estimates. The Ombudsman presents the estimates. It doesn't specifically say — my understanding is that we would replace the Board of Internal Economy, together with 23 and 24. That's my understanding of this.

The Chair: No, I don't have that understanding.

Mr Parker: To be fair, recommendation 23 only refers to the estimates committee being replaced by the Ombudsman committee for this purpose. My point, as a practical matter, is that it's at this level that the budget would be reviewed. Currently, the Board of Internal Economy does not get deeply involved in the Ombudsman's —

Mr Marchese: That's a separate point. The point that Mr Pettit was making and the clerk was making is that in recommendation 24, we have the power with that to alter the estimates presented by the Ombudsman and cause the estimates, as altered, to be laid before the assembly. Then it's debated in the assembly. So we would be controlling the budget, as you suggested, but the debate would happen —

**Mr Pettit:** They want to debate 23 first. I thought we were kind of doing it together, but we're not.

The Chair: It gets a little complicated when you talk about process here. Are you finished, Mr Marchese?

Mr Marchese: I am. The only point I wanted to make was that once we pass 24, then we control the estimates. It doesn't end there, of course. It gets debated by the assembly.

The Chair: Of course.

Mr Pettit: But as you stated earlier, being a majority government —

Mr Marchese: Either way.

Mr Pettit: Either way, we in effect will control it. But I thought we were doing the two together. But if you want to deal with 23, then we can jump to 24.

The Chair: I'd like not to bundle them. I'm going to call the question on 23; we'll still have further debate on 24, I'm sure. On 23, all those in support? That's unanimous.

Mr Pettit has the floor on 24.

Mr Pettit: Now that we've dealt with 23, I just want to clarify that to me the second paragraph of 24 means that we will have at least control, up until it gets to the assembly, over the budget of the Ombudsman's office. That's how it reads. Is that correct?

The Chair: Oh, yes, very clear.

Mr Pettit: In other words, he/she comes in and says that they've got a \$2-billion budget and we say \$1.5 billion is enough. We send that to the House and the House determines, more than likely, in the case of a majority government, that \$1.5 billion's enough.

Interjection.

Mr Pettit: That's correct.

The Chair: Yes. We're going to have to put a bit of time. I think there are a couple of good points made already.

Mr Marchese: I don't mind that debate. This committee decides its budget. We would have a discussion here, obviously. There may be agreement or disagreement. If the disagreement is reflected here, we'll have the debate in the assembly. It doesn't really matter where the debate happens, in my view, except this would become a public process and it would be debated. It would be viewed by the public. There would be people watching what we do when it gets debated again in the assembly. I think it's a good process.

Mr McLean: That's the way it used to be done back 10 or 12 years ago. The Ombudsman came before the committee. We dealt with the budget. We looked at the budget. Normally there wasn't much change. We made some observations. The Ombudsman took it back and probably made some reviews on her own. But at least we were kind of the overseers. We never, ever really interfered. We just kind of looked at it to find out that she or he was being accountable. It worked well.

I think that's exactly the way the situation should be here. It shouldn't be any different now than it was 10 years ago. I know there have been some problems. I think we should go back where we were doing the review. When it goes to the Board of Internal Economy, they simply look at it. There are about six or seven that deal with the Legislature. They all come to the Board of Internal Economy. Last round they wanted to reduce budgets overall by a percentage point. They all came in with their budgets reduced to what was requested. We had no idea really what was in each category other than an observation, but there was never a question asked about any category, hardly, of their budget. They were just all passed within five minutes, more or less, although we did call them in. We had the auditor in and you'd

have the Ombudsman in and there's a very short meeting and it was approved.

I think the process here as it was is the right one. I don't think the Ombudsman should be unhappy with coming here and talking to us and showing us where she's spending her money. How many offices do they have? I think the public should know. Now, I don't know whether the public knows unless they get a copy of a report. But do they have an office in Hearst? Do they have an office in Thunder Bay? I know there are offices all over the province. It's nice to be able to review that and help her. I think what we're wanting to be is helpful, in my opinion.

The Chair: I appreciate the experience you bring to this debate. Mr McLean.

Mr Ouellette: Now that we've unanimously passed number 23, the second paragraph opens that, "The process followed for the review of other estimates under the standing orders apply." Being that we're now debating 24, should it pass, would that require changes in legislation for the estimates?

Clerk of the Committee: There is a section of the standing orders specifically outlining the briefing material to be given and also the time that the committee has. It begins on 68, I believe. But it specifically sets down what should be provided by the ministries and when it should be provided. Each ministry provides briefing books of all their expenditures, headlines "Capital" or "Services." Those are provided beforehand to all the members of the standing committee.

1110

Mr Ouellette: Is that a requirement in legislation?

Clerk of the Committee: No, by the standing orders. Mr Ouellette: Are we having a contradiction of what we're asking for here if in 23 we're asking for the "estimates under the standing orders apply" and then we're asking for a direction on the standing committee on how it's to be handled?

The Chair: If I could respond, that's a good point; in fact, I missed it as well. It's been pointed out by the researcher that in the 1993 report there is on the bottom of page 73 a statement that says, "If this recommendation," meaning recommendation 24, "is adopted, then recommendation 23 will become unnecessary." Then it becomes clear what Mr Parker said, that 24 would circumvent the Board of Internal Economy and the estimates and public accounts and put it right to this committee. But as Mr McLean has explained, that's the way it was done and, after all, the purpose of this committee is to make sure it both allocates enough resources and understands what in fact the resources are. So I think 24 is clear. It must have been debated with respect to whether or not it's in breach of the standing orders, but I don't think it is.

Mr Hoy: I also had a comment in my notes that if 24 was adopted, 23 would be unnecessary. But I think the process that we just went through was good because whoever drafted the original report may have thought that 24 wouldn't get into the report, so at least they had a review of the estimates should 24 have failed. I agree that 23 would become redundant if 24 were accepted.

I want to point out that at the Board of Internal Economy, according to the Ombudsman, her budget was cut, as my notes show, 20% last year. If this committee were to have this authority that we're talking about under recommendation 24, the public interest may be enhanced. There may be situations over time where budgets will rise and budgets will fall, but as Mr McLean pointed out, and he has been in this House longer than I have, sometimes estimates and budgets don't get exact scrutiny, except for the fact that the budget has either risen or fallen. I think this committee could be the protector of the public with this recommendation accepted.

The Chair: Yes, I think that's the whole intent, ultimately, to legitimize the role. Any further questions on recommendation 24?

Mr Len Wood (Cochrane North): Along the lines of the comments that Mr McLean has made, going back to the original recommendations that have been dealt with and discussed over the last four years, the feeling was that this committee could lend support to the ombudsperson and it would assist in the role. Unless we all visit her office and ask questions — she's invited each one of us to visit her office and ask questions, and we could find exactly where all the offices are. I'm sure the information on how much is spent on each office, how much is spent on travelling, is all available if we take the time to tour her office and visit with her. That was the intention, that this committee would lend support to her.

With various pieces of legislation that are being brought in, we don't know what the workload is going to be of the Ombudsman and the offices. We know that with the changes that are being made to the WCB, the workload of the MPPs and the Ombudsman's office is probably going to be a lot larger until people are aware of all the major changes that are being made in their lifestyle.

I would support 24 in saying that this committee is there to support her.

The Chair: Thank you, Mr Wood. I appreciate the comments. I will call the question on item 24. Those in support? That's carried unanimously. Very good. That means, for the record, that 23 is not required. Is that clear in everybody's mind now?

**Mr Pettit:** We have to do something official to delete it, don't we?

The Chair: I would suggest that would be the proper thing.

Mr Pettit: I would move then that — *Interjection*.

Mr Pettit: No? You just let it go?

The Chair: It clearly is ambiguous now, looked at individually. Mr Parker, would you like to comment on this?

Mr Parker: I'm just going to suggest that this process doesn't end with this committee; the report goes forward. The note is already in the 1993 report that if 24 is adopted, ultimately 23 is redundant. But that's a decision for somebody else to make down the line. I'm quite happy with both recommendations to be on the record.

The Chair: Excellent. We've got a choice then at the final day.

Recommendation 25 is before us dealing with the operation and management of the office. Any questions or comments?

Mr Leadston: I'd just like to know your or the committee's definition of "monitor." Are we talking every time the committee meets? Are we talking monthly, semi-annually, annually? This puts a tremendous strain on the Ombudsman's office if we're monitoring the Ombudsman and the office monthly, weekly, semimonthly, biweekly. What is meant? Is there a definition of "monitor"? What is the expectation of the committee in terms of monitoring the Ombudsman's office? Perhaps that's a better question to put to the committee.

The Chair: The Chair reserves the right to gather as much input as possible here. Mr Parker I'm sure will

have a comment.

**Mr** Leadston: I'm sure Mr Parker would have an answer, and Mr Marchese.

The Chair: And the answer perhaps.

Mr Parker: I think we can take some instruction from the commentary that's in the 1993 report and I would just refer the members to that. I'm just reviewing it now myself.

**The Chair:** As well, in the March report there are some extremely valid observations.

Mr Marchese: I support the recommendation. It's a very difficult one, because as soon as you add words such as "monitoring and reviewing the exercise of his or her function," automatically an Ombudsman becomes very nervous and worried about what that means. But I think in the course of our work here as a committee if there are things that come up that we feel need to be mentioned, then they're brought to the attention of the assembly. I don't think it's a problem. It could be something that may support her office or what she does, or it could be something that may alter the function of her office and that can be construed by the Ombudsman to be interference. But I really believe that as a committee we should have this role.

It is not my intention personally to interfere with her office at all or with the work she does, so it's difficult to even think of what it is that we're looking at, other than giving ourselves this power to monitor and review the functions. That could be again of a positive nature to enhance her work or it could be some other problem that will just enhance her work generally or our work generally. I don't see it as a diminishment of her office. I don't see this as something that we are going to be doing anything more regularly than what we're doing now. I don't see this as a daily review or weekly review or monthly review, other than what we do as a committee: reviewing these recommendations, for example, reviewing her annual report, and in the course of that something may or may not come about.

It could be that something happens in the course of her employment or her work, something comes up that we should be talking about. But I don't see it as digging for information to monitor specifically every inch of her work. I don't see that as the function of this. It's a general power that we give to ourselves as a committee, and I'm not sure that its intent is to diminish or interfere with her work.

The Chair: I agree. It can't be seen as threatening.

1120

Mr Hoy: I agree with what Mr Marchese said. Also, I'd point out that the committee is also, for example, asking for an ombudsplan. We may want to review that. After all, if we're asking for a plan we would certainly want to sit down and discuss it at some point and at some time. That's one example of reviewing, to go over the ombudsplan the Ombudsman will provide to this committee. That's just one area.

We had a circumstance at our last meeting, where certain policy matters occurred and changes were made at the Ombudsman. I see that as another example of where we might want to monitor and review certain aspects of the Ombudsman's office as it pertains to policy. Last week was an example, I think, that we would like to see discussed, should we determine that we want to take the time to do it. I don't see it as an intrusive recommendation and I don't see it as a makework project for the committee here.

Mr McLean: Could I ask for a clarification? Did we pass recommendation 16?

The Chair: Sixteen is passed.

Mr McLean: Isn't this much the same as 16? What's the big difference?

The Chair: The clerk has pointed out that it's specific to the act, the one we're dealing with. The previous one, number 16, refer directly to "changes to the Ombudsman Act that the committee considers" desirable. The other one doesn't; it's more the ongoing policy of the operation of this committee.

Mr McLean: There's very little difference, in my opinion.

The Chair: I guess you're right, and that point could be made. Much of this is much more detailed, but it's connected. Every one of the recommendations — whether it's the budget, the policy, the monitoring, the reviewing; that could be budget monitoring — are connected.

Mr Leadston: I just wanted to have some clarification, Mr Chairman. In your previous professional life, monitoring a line in the automotive industry means something different from monitoring a classroom, different from monitoring an individual in a work setting, different from an executive who's running a major agency for the province, with this committee responsible for monitoring his or her activity. I am seeking clarification specifically on that one word.

The Chair: That's a very good point. I think monitoring is specific to the organization, but the exercise, the process itself, is pretty much common: What are the expected outcomes? How did we do?

Mr Leadston: I was wondering about the expectation of the committee. Are we expecting that the Ombudsman be monitored weekly, monthly or whatever? I'm rather surprised, as a member of this committee, that the Ombudsman would not be here to clarify these very points.

Mr Marchese: She's monitoring them.

The Chair: Yes, we're probably being monitored.

Mr Leadston: I just thought to offer a resource, an interpretation, particularly to myself and I'm sure to others who are new members of this committee.

The Chair: There are suggestions throughout this report that we would be working much more closely with the Ombudsman's office. The clerk has referred me to recommendation 17, which I believe has been passed. Just generally, it says "be amended to provide that the Ombudsman shall, at the request of the standing committee on the Ombudsman, attend at the meetings of the committee to assist in the fulfilment of its mandate." This is much like the Provincial Auditor, Mr Peters, does.

It's a very good point. We do want to work in partner-ship and I think many of the comments here are of a

positive nature.

Mr Parker: I think it is important that we take some direction from the commentary in the 1993 report. It makes it clear that in the use of the term "monitor" they're making a distinction between monitoring and controlling. It's important that we keep that in mind and that it be understood that that's the concept that's being addressed here.

I appreciate that the Ombudsman has raised a concern that this recommendation might lead to a sense of control. The Ombudsman I think quite appropriately cautions us on that point, again stressing the need for independence. I don't think independence is at risk if there's a proper understanding of the term "monitor," as

it appears in this recommendation.

I refer the members to the commentary in the 1993 report for that context. They make the distinction between answerability and control. Throughout the commentary the point is implicit, and it's made explicit in a few areas, that it's not intended in this recommendation that anyone go in on a day-to-day basis and question everything that's done or question individual decisions, much less have an influence on those decisions. But it is anticipated that the general policy thrust of the office be monitored by this committee and that questions that logically arise be raised and discussed in this committee. There's no suggestion that a specific instruction flow from that.

If the members were to review the commentary in the 1993 report, I think the issues that have arisen in this discussion are adequately addressed in that commentary.

The Chair: Most of what Mr Parker is referring to is on page 77. We benefit from his experience and wisdom.

Mr Pettit: It frightens me somewhat, but for about the second or third time this morning I agree with Mr Marchese. This troubles me; it sets off alarm bells in my mind. But I do agree with him on this.

Mr Len Wood: There is some hope.

Mr Pettit: Indeed. I think Mr Parker made a good point and so did Mr Marchese. This wouldn't become a witchhunt. It just opens the door for us if we see something we want to question, to call her/him in and get some response to areas of concern. I certainly don't perceive it as any form of witchhunt. If they can't be accountable to or answer questions from us, then who is he/she accountable to?

The Chair: Exactly the whole thrust.

Mr Ouellette: I see the definition of monitoring as being undefined so the committee can define the requirements as the committee and the requirements of the jobs change. In the same fashion that we debated number 23 and then referred to 24, if we had looked at 26 prior to

dealing with 25, the ombudsplan should have given us some monitoring direction. Under that, we as a committee can approve a plan, and if further monitoring is required, the committee could do that at a later date. I would suggest that we call the vote on 25 and include the discussions of looking at 26 as well.

The Chair: The advice of Mr Ouellette is to call the vote, and I'm going to do just exactly that. I'm going to call the vote on number 25. All those in support? That's unanimous.

I'm going to draw your attention to number 26 in the revised copy. Recommendation 26 was revised in the working paper. Paper I'm going to ask the clerk of the committee to read into the record the revised recommendation 26.

Clerk of the Committee: Recommendation 26 reads: "That the standing orders of the Legislative Assembly be amended to provide that the Ombudsman shall discuss with the committee his or her annual ombudsplan, which shall set out major projects for the forthcoming year." 1130

The Chair: Any comments on that? It's pretty straightforward. It ties in, as Mr Ouellette said, very nicely. All those in support? That's carried unanimously.

Recommendation 27 also has a revision. I'd again ask the clerk to read 27 from the working paper into the record.

Clerk of the Committee: "That the act be amended to provide that the assembly's rule-making power shall be exercised through the standing committee on the Ombudsman, which shall give the Ombudsman reasonable notice of its intention to make rules and shall invite the Ombudsman, and other interested parties, to make representations concerning any proposed rules."

The Chair: Any further questions on that with respect to working with the Ombudsman's office? I'm going to call the question. All those in support of revised recommendation 27? That's carried unanimously.

Recommendation 28: Take a moment to read that. This one is dealing with the investigation of complaints. Any questions or comments?

Mr Hoy: I've got a comment on 28 which could also apply to 27. I didn't speak up quickly enough to do it under 27, so I'll do it here. This one says we should examine areas in which rules should be formulated. I think the Ombudsman made the comment that if rules are to be initiated, certain guidelines should be put in place. She felt there was a necessity for that.

This recommendation says the committee should undertake an examination of areas in which rules would be formulated. To me, that almost seems as though we would have some kind of plan into the rule-making process and may formulate the need for the guidelines, should recommendation 28 pass. I think that kind of action would accommodate the Ombudsman. She appeared here and said we may need some guidelines prior to a rule-making process; I think 28 rather states that when we undertake an examination of areas in which rules should be formulated.

The Chair: That's the plan.

Mr McLean: There has been some discussion for a long period of time with regard to the Ombudsman's

expansion of her responsibilities; that would be into the hospital and the municipal jurisdiction. Would the revision work plan and changes to establish rules — would this be what this is about, to make rules so that if she wants to expand her jurisdiction there would be a process in place whereby that would happen and we would then review that? Is this allowing it to be set up to allow it to happen?

The Chair: It says "existing areas" in the particular wording.

**Mr McLean:** But the term "invite" is peripheral to the permit as denoting the committee's intention to actively seek the Ombudsman's participation in the rule-making process.

Mr Hoy: I suspect that Mr McLean's question would be answered through the process itself of examining areas where the committee thinks we should go. I would concur that recommendation 28 allows us to discuss new areas of endeavour, but we have to determine whether we actually want to do that. That discussion will take place some other time as it pertains to some of the areas you've brought up just now.

The Chair: We've talked about the ombudsplan, we've talked about a lot of this involvement, and I think they're all very much linked. If you look in the March report, under recommendation 28 it refers you to 27, which Mr Hoy pointed out he didn't comment on. It's talking about dialogue and making plans into guiding the process, the partnership.

Mr McLean: Recommendation 13 was deferred, and that was defining governmental organizations. That has to do with: "Other possibilities for inclusion in the schedule are areas where the public does not currently have the right to complain to the Ombudsman," such as children's aid societies, municipalities and public hospitals.

The Chair: You're right. That is more proactive in terms of saying yes, we are going to look into those areas. We deferred that, as you've pointed out. I think we're pretty much in agreement.

Mr Marchese: I just want to make a point. I'm not sure the rules refer to expansion of power so much as other areas.

I want to support what the Ombudsman said. She generally says rules are not helpful because they'd limit the Ombudsman's role or would tend to limit. I'm not sure about that. What I do support in her comments is that in the second paragraph she says, "It should also be established that rules are generally made to empower the Ombudsman to effectively perform the functions of the office, not to limit the office's role."

I support that, and I think we would as well. I don't think it's our intention to limit her role in any way, but rather to make it more effective and efficient, not just for us but particularly for her office. If we were to set up rules to limit her office, it would be contrary to our purpose and hers, it seems to me. I support this motion in the context of making her office more efficient and more effective and to allow her to perform her functions as I think she would like. I think we should put it in that context.

The Chair: I agree. It's been framed in a positive light. I'm going to call the question with that comment.

All those in support of recommendation 28? That's carried unanimously.

Recommendation 29.

Mr Parker: For the record, Mr Chair, can I make a point in the context of rules? Looking at the commentary in the 1993 report, the power to make rules exists at present in Sweden and Finland and similar powers exist in six of the other seven provinces in Canada which have ombudsmen. In putting forward this recommendation, this committee is doing nothing novel. It's in line with established practice elsewhere.

**Mr Marchese:** I still haven't had a chance to read this recommendation. We're looking at 29, correct?

The Chair: We're looking 29. In the 1993 report it's extensively documented; page 93 to 100 is the back-

Mr McLean: Mr Chair, I'd like to relate to you once again what I did in the last meeting, which is with regard to when the Ombudsman has exhausted her role and has reported and the investigation is closed as far as she is concerned. What we're saying here is that from that point forward it's up to the Legislature, assisted by the standing committee, to take whatever further action is deemed

appropriate.

I think there's got to be place there where it should come to the committee if there is a special case, and there are a few special cases. I refer back to Simcoe Mechanical Ltd, which was on the books for 10 years before it was resolved. She had a report — I haven't got it from the library yet, but I'll get it; I've been searching for the letter — whereby she felt they had exhausted her role. I indicated that with the help of Mr Philip, we had further information and it was further investigated; the lawyers for both the company and the Ministry of the Environment came to a conclusion and there was a payment made.

The point of what I'm making is, is there some point where the Ombudsman deems to have exhausted her role where the committee can say, "We need further investigation," or only on the proof of further evidence? How would that be part of this?

The Chair: Again I defer to those with a little greater experience in this area. What were the access denied cases? They're the ones that to me — what do they call those cases?

1140

Mr Parker: Recommendation denied.

The Chair: "Recommendation denied" cases I found to be important reporting points, both to say, "Numerically we're solving most of the cases," and also specifically, "What is the final resolve of denied cases?" It isn't the decision; it's to ensure process and all information has been — is that the point you're making? You must have brought further additional information to the attention of the Ombudsman's office.

Mr McLean: At the time I felt the office did not go far enough in dealing with the issue. I felt they wanted to get rid of it; it had been there for eight or 10 years and they had come to the conclusion that with the lawyers arguing back and forth nothing was going to be resolved, and thought they had done the best they could and wanted to get rid of it.

You're not getting many cases like the one I'm referring to. There was another one with a farmer at one time who had problems and it went on for quite a few years. I don't know really what the resolve of that was. It was resolved, but I'm not sure. So it's really special circumstances. I wonder if the committee would be the one she would bring that to, to define a final solution to it.

The Chair: That's the balance between interference

and broader policy direction.

Mr McLean: I don't want to interfere with what she's doing.

The Chair: I hear you. But no one is perfect: not a judge, not an Ombudsman. Information is a fragile thing. If all the pieces aren't there, sometimes the decision is a very difficult judgement. I wouldn't want to be into the details. That's my own opinion.

I'm interested in deferring to other members with much more experience. Mr McLean has given us an example where in the past "recommendation denied" cases have been reopened and pursued and resolved with the assistance of the committee.

Mr McLean: That's right.

The Chair: I would like to make sure, and I'm sure the Ombudsman would too, that every applicant gets every consideration possible, that due process had occurred, period — nonpolitical, not interfering, but making sure every possible question had been answered.

Mr Marchese: Mr Chair, did I miss something? The Ombudsman makes a recommendation with respect to administering and a particular problem she has uncovered. Then the ministry responds and denies it. Then it comes to our committee because we review those recommendations that are denied. In that particular instance we would agree with either the Ombudsman or the ministry, so we have a role to play in that regard. At that time we have the opportunity to support or not to support. I guess Mr McLean is getting at whether or not at some future point we can reopen it somehow.

The Chair: If more information came forward.

Mr Marchese: I suppose we could do that. I'm not sure what question is being raised here, but we could do that.

The Chair: I fully agree. It's a positive interpretation I take from it. It's no different from the audio recordings. We would be completely oblivious to that event had some individual not brought it to our attention. In fact, there would be no policy today. So the committee has a role to assist in resolving, not creating —

Mr Marchese: Yes, if it ever came up again.

The Chair: Exactly.

Mr Marchese: Mr McLean, I think we can do that. But with respect to this recommendation, obviously the Ombudsman says, "I've done my job here; now it's over," and our recommendation says, "You continue to monitor it as well." As I see it, this recommendation is fine, because if the Ombudsman in the first place did a review of a particular problem in a ministry, it stands to reason there's a concern, and even though it might be denied, she should still continue to monitor, as we should. Once something has been studied because of a particular problem, it alerts us that the problem probably is not going to go away even though it has been denied.

The Chair: I think the Ombudsman, in her March report, agrees pretty much with what Mr Marchese said.

I'm going to call the question on recommendation 29. All those in support? That's carried unanimously.

Recommendation 30 is pretty much connected to 29, which we've just discussed at length. Mr McLean, did you have a comment? No. I'm going to call the question on 30: All those in support? Carried unanimously.

There is a revision on 31. I draw your attention to the working document. I'll ask the clerk to read the revised edition of 31, which is dealing with denied cases.

Clerk of the Committee: "31. That the act be amended to provide that the Ombudsman shall include in each annual report a description of each case in which a formal recommendation has been presented by the Ombudsman to a governmental organization, that is, cases in which a tentative or final report is presented to a governmental organization. The description of each case should include the corrective measure taken by the organization involved."

The Chair: That revision is pretty clear, by adding those few words. Any further comments on recommenda-

tion 31?

Mr Hoy: The Ombudsman pointed out that currently she's not allowed to publish the actual tentative report, because by definition it represents an interim step in an investigation. However, she went on to say that she could report the substance of a complaint, "along with my findings and any resolution," and went on further to say that numerical summaries of cases could be reported on without names, without, I would assume, even the ministry or organization involved.

There's probably an understanding by the committee that we know we can't ask for all those details of who is involved, what ministry, but certainly a broader view, as she pointed out in her response, could be attained. I assume that is all we could ask for under recommenda-

tion 31.

**Mr Marchese:** You're suggesting we could also ask her to include numerical summaries of other cases which are not either tentative or final?

Mr Hoy: It was the Ombudsman's suggestion that she could do that. I think we should be ready to accept that.

Mr Marchese: It's not in the motion, obviously.

Mr Hoy: No, it isn't.

Mr Marchese: I don't mind supporting that by way of extension to our motion. Mr Parker, I don't know if you have a comment in that regard.

Mr Parker: Thank you for drawing me in.

Mr Marchese: You were the Chair. You've been active in this committee.

Mr Parker: As I heard the Ombudsman's comments, she was generally supportive of recommendation 31. She raised the caution that there may be occasions where confidentiality is an issue. I respect that and I think that should be borne in mind in the exercise of recommendation 31, but I don't know that it leads us to change the wording of recommendation 31.

Mr Marchese: An addition, not changing it.

Mr Trevor Pettit (Hamilton Mountain): It was a revision.

Mr Parker: I'm looking at the revised recommendation 31 now and I'm proposing that we proceed with that recommendation. I am grateful to the Ombudsman for raising the caution that there may be times when confidentiality is an issue. I see that as a matter to be addressed in implementing recommendation 31. I don't see that as a concern that it would lead us to amend 31 or make an addition to it.

1150

The Chair: We are dealing with revised recommendation 31. Any further debate? I'm going to call the question: All those in support of the revised recommendation 31? That's carried unanimously.

Recommendation 32, a complaint about the Ombudsman. All those in support of 32? That's carried unanimously.

Recommendation 33.

Mr Dave Boushy (Sarnia): Could we just go back to 32? What's the reason for this recommendation? What was the background?

The Chair: That we're not to be the court of last resort.

Mr Marchese: I think the point is that once the Ombudsman has done a review, by and large it's quite thorough, to my knowledge. For us to then engage in having to deal with that issue again would in some ways be interfering with the job of the Ombudsman or interfering with the sense of neutrality she carries in her job. If we were to handle each complaint, it would be another problem. We would be the final court of any decision-making and I think that complicates our role and the role of the Ombudsman.

The Chair: As Mr Marchese has suggested, we've discontinued the role. The committee is no longer the final Court of Appeal. The decisions by the Ombudsman are indeed final unless there's other relevant information brought forward, as Mr McLean and previous recommendations have allowed us to bring forward. Are you satisfied, Mr Boushy?

**Mr Boushy:** As I understand it, if there is a particular case where the committee feels the Ombudsman made a mistake, the committee can still review it. Am I correct?

The Chair: Yes, with additional information being brought forward.

We're dealing with 33. Any questions or comments on 33?

Mr Marchese: If I could just have a look at that.

The Chair: Sure. It's on page 20.

Mr Marchese: She says it's not necessary, obviously, because she has a policy.

The Chair: Checks and balances, that's exactly right, where the committee feels a responsibility to ensure a procedural protocol. Any further questions? I'm going to call the question on 33: All those in support? That's carried unanimously.

Recommendation 34. There's a revision to that as well. Is it the wish of the committee that we deal with 34 and at that time we can adjourn? It's 12 o'clock. Okay. We'll deal with 34. I'll ask the clerk to read into the record the revised recommendation 34.

**Clerk of the Committee:** "Complaints about Ombudsman investigations:

"34. That the Ombudsman Act be amended to provide that for the purpose solely of assisting the committee in the formulation of rules for the guidance of the Ombudsman, the Ombudsman may disclose information which concerns his or her handling of an investigation, where the Ombudsman has received the authorization of the complainant concerned to discuss the matter with the committee. The amendment should also provide that the committee shall not disclose or publish the information without the consent of those concerned."

The Chair: That's something near and dear to our hearts with the recent complaint. Is that clear to everyone, the investigation process itself? All those in support of recommendation 34? That's carried unanimously.

I adjourn this committee until next week. The intent of the committee, by the way, and I want to make two points: First, we would like to complete the review of the 1993 report by next week. In the interests of that goal,

would anyone have any objection to meeting earlier to ensure that we complete it?

Mr Pettit: How many have we got left?

The Chair: There are 10 left. Mr Pettit: We can get through it.

The Chair: I'll leave that with the committee.

The second thing I wanted to mention is that last meeting the committee had directed the Chair, with the assistance of the subcommittee, to draft a letter to the Ombudsperson and that has been done. The subcommittee has reviewed that report, and it's my understanding that Mr Parker had a small revision in the last paragraph, which was to strike a certain line. I would ask that the letter be forwarded over my signature to the Ombudsman. The members will also receive a copy of that letter.

Until next week at the regular time this committee stands adjourned.

The committee adjourned at 1156.

# **CONTENTS**

# Wednesday 18 June 1997

Review of the Office of the Ombudsman				
. Vice-Chair / Vice-Président:	Mr Trevor Pettit (Hamilton Mountain PC)			
Mr Dave	Boushy (Sarnia PC)			
Mr Bruce	Crozier (Essex South / -Sud L)			
Mr Pat	Hoy (Essex-Kent L)			
Mr Ron	Johnson (Brantford PC)			
Mr Jean-Marc	Lalonde (Prescott and Russell / Prescott et Russell L)			
Mr Gary L.	Leadston (Kitchener-Wilmot PC)			
Mr Rosario	Marchese (Fort York ND)			
Mr Allan K.	McLean (Simcoe East / -Est PC)			
Mr Bill	Murdoch (Grey-Owen Sound PC)			
Mr John R.	O'Toole (Durham East / -Est PC)			
Mr Jerry J.	Ouellette (Oshawa PC)			
Mr John L.	Parker (York East / -Est PC)			
Mr Trevor	Pettit (Hamilton Mountain PC)			
Mr Len	Wood (Cochrane North / -Nord ND)			
Clerk / Greffier:	Mr Franco Carrozza			
Staff / Personnel:	Mr Andrew McNaught, research officer, Legislative Research Service			

B-17



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B-17

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Mercredi 25 juin 1997

Comité permanent de l'ombudsman

Examen du Bureau de l'ombudsman



Président : John R. O'Toole Greffier : Franco Carrozza

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# LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 25 June 1997

# ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 25 juin 1997

The committee met at 1008 in room 151.

# REVIEW OF THE OFFICE OF THE OMBUDSMAN

The Chair (Mr John R. O'Toole): We're going to proceed. We have a quorum, a majority of members. With respect to the discussion so far, just to bring you up to date, the intention today, with the assistance and cooperation of the committee, is to try to finish the review of the recommendations from the 1993 report.

We will start with recommendation 35, which deals with the annual reports. There are two or three outstanding recommendations that we have set aside until we have completed our full review. With that comment, I'll ask if there are opening comments by any of the members of the committee. Seeing none, we'll start with 35. Following the normal process, I would ask Andrew to read the recommendation, or whatever our process was.

Clerk of the Committee (Mr Franco Carrozza): We don't read it, but he gives you a briefing on it.

The Chair: Yes.

Mr Andrew McNaught: I'm a little more up to speed this week, filling in for Philip. I'll just give you a very brief background on each recommendation. Would you like me to read the recommendation?

The Chair: Read the background or —

**Mr McNaught:** Recommendation 35 proposes "...that rules be established to guide the Ombudsman in the information to be presented in the Ombudsman's annual reports."

In 1993, the committee observed that neither the act nor the rules provide any guidelines on the kind of information to be included in annual reports. Moreover, there was no mechanism which allowed the Legislature to indicate to the Ombudsman the kind of information it would be interested in. The committee noted that this led to inconsistent reporting in the past. Some of the witnesses in 1993 complained that there had been a lack of meaningful information and a lack of statistics which would allow a comparison of patterns from year to year.

At the most recent committee hearings, the Ombudsman expressed a willingness to consult with the committee about the information it would like to see in an annual report but also expressed concern that the committee might attempt in some way to control the Ombudsman's exercise of discretion to determine what is reported in the annual report. That's the background to that.

The Chair: Three or four of the recommendations that are coming up all deal with the annual report, so with your indulgence —

Mr Rosario Marchese (Fort York): Did anyone else comment on that issue other than the Ombudsman?

The Chair: No, not in the reports that we have been given.

Mr McNaught: According to the summary, no.

Mr Pat Hoy (Essex-Kent): Very briefly, as mentioned already, I think the Ombudsman is willing to talk about what is in the annual report. She did caution that the committee should not be writing the report themselves. I don't think that's our intention. It's just a matter of exchanging information and deciding what we would like to know, what she would provide for us. I don't see it as the committee's intention to write the annual report, nor do I think we could. I think it's an information-sharing recommendation, and we'll support it.

The Chair: No further discussion? I'll call the question in support of recommendation 35. All those in

support?

Mr Marchese: Sorry. I was reading what the Ombudsman was saying here, and what Mr Hoy says is slightly different from what she is saying. Mr Hoy was saying that the Ombudsman was suggesting that perhaps we would be the authors of the report. Obviously we don't want to do that. Her comments say, "It is not appropriate, however, for the committee to author the report" — ah, that's part of it, "to author."

The Chair: That's right.

Mr Marchese: — "or to attempt to control the Ombudsman's exercise of discretion to determine what is reported."

Mr Hoy, you're saying we don't want to author it, but in terms of direction to the Ombudsman, that's acceptable to you, obviously. Right? It is to me as well.

Mr Hoy: I don't see us as authoring the report, only giving some direction as to what we would like to see in it, but in a flow of information between the committee and the Ombudsman, whoever it might be currently and into the future.

We have been asking, as a committee, for certain information, improvements in reporting generally, and my only comment is that we may ask for certain information and a certain style of reporting, but I don't think it's our intention to actually write the report. That's not the way I view it.

Mr Marchese: I was agreeing with that, actually. It's not the intention of any one of us to do that.

The Chair: I fully understand, and I think that's the sentiment I'm hearing with respect to the comments in the 1993 report, "The Ombudsman would be pleased to consult with the committee about the information it feels should be included in the annual report," going on to say that the committee should not author, but she's willing to discuss and dialogue, which I think is very correct, to have some specific group responsible for responding to

the report. In fact, informally, I think the Ombudsman would like to have a specific audience to address what needs to be in the report and let her write the detail.

With that, if there are no further questions, I'll call the question again on this. All those in support? It's carried unanimously.

We are on to number 36.

Mr McNaught: Recommendation 36 is "...that the Ombudsman's annual reports provide statistics on complaint handling and outreach work, and in particular, that the statistics presented provide a clear picture of the nature of complaints, the effectiveness with which they are processed, and the nature of the outcomes achieved."

The 1993 report noted that there were three types of statistics the committee might be interested in: first of all, complaint characteristics, such as a profile of the complainant, the government organization involved and the subject matter of the complaint; the second type of statistic was complaint processing, for example, the length of time it takes to resolve a complaint; and third, statistics on the outcome of complaints, specifically what was the remedy and in whose favour a complaint was resolved.

The committee suggested that the specific data to be included in the annual report could be determined through discussions with the Ombudsman. At the committee's most recent hearings, the Ombudsman stated that her annual reports already attempt to reflect this type of information, but welcomed suggestions on improvement.

The Chair: Are there any further comments? I think that's pretty straightforward. The only response from the Ombudsman in the 1993 report was: "The Ombudsman's annual report currently attempts to reflect such information. Any suggestions for improvement are welcomed." That is the only comment.

Are there any further questions on 36? All those in support? That's carried unanimously.

Recommendation 37.

Mr McNaught: Recommendation 37, "...that the Ombudsman include in his or her annual reports the following information: (a) comparative data from the previous fiscal year, and (b) graphs which show the number of complaints brought against a particular governmental organization and the stage at which those complaints were resolved."

This recommendation simply reflects something the committee has been calling for since its 19th annual report in 1991 in an effort to develop a standardized format for the presentation of statistics. At the most recent hearings, the Ombudsman stated that she would welcome an opportunity to hear the committee's comments about the statistics contained in her latest 1996-97 annual report.

I had a quick look at that report yesterday and it does include a lot of the things the committee has been asking for, although I didn't see any information on the specific type of remedy that had been arrived at in particular cases. It simply said "resolved" or "not resolved," but didn't describe the type of remedy, and I didn't see any statistics on the length of time to resolve complaints.

The Chair: Any comments from members of the committee on recommendation 37 dealing with audits and

statistics? No further questions? I'll call the question. Those in favour of recommendation 37? That's carried unanimously.

Section 38 deals with audits.

**Mr McNaught:** Recommendation 38 reads "...that the Provincial Auditor conduct value-for-money audits of the Office of the Ombudsman on a regular basis."

The 1993 report notes that the committee's intention here is not to have a comprehensive value-for-money audit of the Ombudsman's office or of its entire operations on a regular basis; rather, to have certain aspects of the Ombudsman's operations selected and examined so that over time there is a consistent review of the efficiency of the office.

The Ombudsman has expressed some concern about the resources that might be required to carry out these audits if they were to be conducted more than once every five years

The Chair: There doesn't seem to be opposition even from the Ombudsman's comment, just as it was explained by Andrew. Any further questions on recommendation 38? Then I'll call the question. Those in support?

Mr Trevor Pettit (Hamilton Mountain): If I might,

would we not have to define "regular basis"?

The Chair: A value-for-money audit, I think, could be determined by any group, by the government itself or by this committee, saying, "Isn't it about time we looked at" — in the context.

Mr Pettit: It could be, but it isn't. So at what point would that arise?

The Chair: The clerk advises me that the Provincial Auditor does have a definition of a value-for-money audit

Mr Pettit: As to how often it should occur?

The Chair: It's a guideline.

Mr Pettit: And what might that be?

Clerk of the Committee: I am not sure of the details. I could find out for you.

Mr Pettit: All right. I would think this is a little openended here. We may want to define "regular basis."

Mr John L. Parker (York East): I just want to remind the committee that this document is a report; it's not legislation. I don't know that we need to get into the fine detail of definitions at this point, with time lines and schedules and that sort of thing. This document is intended to address certain concepts and principles and it could be left for another day in another forum to get into the kind of level of detail that Mr Pettit is driving at.

The Chair: A nice piece of instruction there.

Mr Marchese: Even for another day, I am not sure we would want to define "regular basis." I think the auditor does that however regularly he does them, some at times probably more regularly than others. But I don't think we want to fix a date, whether it should be every year or two. It's something the auditor would do, obviously. 1020

Mr Jerry J. Ouellette (Oshawa): Could I just ask the researcher to bring back those remarks about every five years in regard to this?

Mr McNaught: The Ombudsman was concerned that there might not be sufficient resources to allow an audit on more than a once-every-five-years basis.

The Chair: It was her comment.

Mr McNaught: She doesn't seem to be objecting to once every five years.

The Chair: No further comments? No one's opposed to the concept, so I'll call the question. Those in support of recommendation 38? That's carried unanimously.

Recommendation 39, any comments or questions? All those in support? It's carried unanimously.

Recommendation 40. These are all dealing with the

audit section. We'll just have a brief -

Mr McNaught: Recommendation 40 is "...that the Ombudsman Act be amended to provide that the Office of the Ombudsman shall be required to adhere to Management Board of Cabinet's Directives and Guidelines. The act should further provide that rules may be established to provide for the non-application of the Directives and Guidelines where the committee determines that their application would be inappropriate."

This arose out of concerns expressed by witnesses in 1993 about some of the administrative practices of the Office of the Ombudsman. The committee noted that at that point the Ombudsman was able to set her own administrative standards. She wasn't required to adhere to

a set standard.

The Ombudsman's main objection to this recommendation is that by making her office subject to the government's operating policies, that is, the Directives and Guidelines, this could create an impression that the Ombudsman is also subject to the control of the government and therefore not independent.

The Chair: Any questions or comments on number 40, dealing with under what sort of governance the office operates? Good argument in that. No further questions and comments? I'll call the question on recommendation 40. All those in support? It's carried unanimously.

Recommendation 41.

Mr McNaught: Recommendation 41 is "...that the Provincial Auditor report the results of audits of the Office of the Ombudsman to the public accounts committee, which shall refer them to the standing committee on the Ombudsman."

The position of the Ombudsman has been and continues to be that the Board of Internal Economy should continue to have the sole responsibility for considering audits of her office since this procedure "demonstrates the Ombudsman is not a civil servant and is not a part of the government bureaucracy."

However, the committee noted in the 1993 report that it had concerns about whether the board has the resources to allow it to fully consider the contents of audits, and also noted that there isn't a procedure in place that allows the board to review and report to the assembly on audits that it receives. It also noted that the board's hearings are held in private.

I also note that the committee didn't share the Ombudsman's concerns that having the audits referred to the committee might compromise the Ombudsman's independence, since the act clearly defines the Ombudsman as an officer of the Legislature.

The Chair: Any questions or comments on recommendation 41? I think it's a central issue. There being no

further questions, I'll call the question. Those in support? It's carried unanimously.

Recommendation 42 has a revision. I would ask that we address the revised recommendation, and in that aspect, the report we're dealing with — this is the working paper document — indicates that recommendation 42 was or should be deleted. Would everyone take a couple of minutes and read it. It was to be deleted "...that the standing orders be amended to provide that the membership of the standing committee on the Ombudsman shall consist of six government members and five members drawn from the two opposition parties. The standing orders should also provide that the Chair of the standing committee on the Ombudsman shall be a government member."

I don't see what's wrong with that. That's what exists, as I understand. The recommendation before us is to delete recommendation 42 from the 1993 report. All those in support of the deletion? That's carried, so it's deleted.

Recommendation 43.

Mr McNaught: That reads "...that the standing orders be amended to provide that the reports of the standing committee on the Ombudsman shall be deemed to be adopted at the end of the session following the session during which the report is tabled, unless before that date a vote has been held on the motion to adopt the report."

The Chair: You're reading the revised — Mr McNaught: Sorry. Yes, that says "revised."

The Chair: Okay. This is revised from the working paper. Mr Marchese?

Mr Marchese: Mr Chair, I just wanted to read the original versus the revision for a second.

The Chair: Okay, let's take a moment. They're both in the working paper report.

**Mr Hoy:** This recommendation 43, I believe, just simply gives a time frame. It's a housekeeping recommendation.

The Chair: I agree. Any further comments on recommendation 43? All those in support? I declare the motion carried unanimously.

Recommendation 44 also has an amendment to it. I'd ask staff to address the amended recommendation from the working paper.

Mr McNaught: Recommendation 44 is that the standing orders be amended to reflect the new terms of reference for the committee. I think the amendment is simply that the first term of reference was originally at the end of the recommendation and now it's at the beginning, simply to reflect the importance the committee attaches to this issue, and that specifically is "to provide a legislative link and sounding board for the Ombudsman, with a view to advancing the Ombudsman's fulfilment of...her functions." That's now at the start of the recommendation rather than at the end.

The Chair: Anyone have any comments or questions on recommendation 44?

Mr Hoy: One of the recommendations within recommendation 44 is for the general rule-making. I think in the past the Ombudsman has stated that if we're going to have rule-making provisions, we should have some guidelines prior to that. This came up earlier in the report

under another section. I just wanted to bring to the committee's attention that her recommendation was — well, in general terms, I don't think she cared for rule-making, but if we were to adopt a rule-making procedure, we should have some guidelines before that.

Also, one of the recommendations is "to review and alter, as it considers proper, the estimates presented by the Ombudsman..." I haven't read the whole section, but that first line. I would think the Ombudsman would have some difficulty with the words "alter, as it considers proper, the estimates...." Reviewing, I think, is clearly acceptable, and at some stage after this report moves forward we might want to have fuller discussion on the word "alter." I think it's significant wording within this recommendation. This is probably one of the longest recommendations and has many parts to it. Those are two comments I wanted to make on recommendation 44. As I said, it is quite a lengthy recommendation.

The Chair: I agree. I concur that recommendation 44 is very substantive, but it's almost a balanced recommendation because it talks about more of a directional role for this committee, but it also talks about more of a partnering role with the Office of the Ombudsman. Setting up the guidelines, I suspect, for the functioning of the office and this committee is really central to what that whole report is about.

If there are no further questions, I call the question on recommendation 44. All those in support? That's carried unanimously. Thank you very much.

I believe that takes us to the end of the report, is that not true? We still have three recommendations: 7, 13 and 18. We'll go back to recommendation 7 and we will have a little chance to look at the working papers and anything you can add on that. We'll deal with the revised recommendation from the working paper.

Just going by the clerk's advice here, Mr Parker, the former Chair of this committee and an eminently respected member of this committee, wanted to reserve time to comment further on recommendation 7. Now is your opportunity.

Mr Parker: Thank you for the description of me as eminently respected. That in itself does not distinguish me from any other member of this committee, least of all the current Chair.

I forget at the moment what my thoughts were on this point. I think we were getting hung up on something, and rather than get bogged down at the time, my feeling was that we should just move on and come back to this after we had dealt with the rest of the report. I think that's why I asked for it to be stood down, not because I had any specific comments in particular. But maybe if you just bear with me, I'll review my notes on this and see what I might bring to bear on the subject, but don't hold up the discussion on my account.

The Chair: Are there any other further comments?

Mr Hoy: I wonder, Mr Parker, if it wasn't that you wanted to return to the original recommendation 7. It was one of the comments I took down from the last meeting, but I don't know, quite frankly, whom to attribute it to. I knew you did want to stand this down. Is it a possibility that you wanted to return to the original recommendation?

Mr Parker: I honestly don't think so. I think it was just that we were spending considerable time on this provision and I thought it might be useful to set it aside and come back to it after we had done the others.

The Chair: If I may interrupt, Mr Parker and Mr Hoy, just to clarify, the intent of recommendation 7 was to permit the public comment of the Ombudsman's office, rather general. The revision has a section which says, "by means of a special report to the assembly," which would more or less structure the ability of the Ombudsman's office to respond publicly. That's the subtlety here; it's whether or not this committee is directing the manner in which the Ombudsman's office reports on public issues that arise and the others, but neither case limits the ability to respond.

Mr Len Wood (Cochrane North): I am just trying to recall exactly the reason why "by means of a special report to the assembly" was put in there. I believe it was the feeling of the committee over the last three or four years we've been discussing this that we wanted the Ombudsman to be able to make public reports rather than just an annual report. But the way of doing it was to allow her to make a special report to the assembly and bring concerns she might have out in the public. I believe that's happening now.

The Chair: As opposed to a press conference.

Mr Len Wood: Yes.

The Chair: Any other comments? It could be, but again it's a recommendation of this committee, and I think it's not limiting the power of the office to publicly comment but more structuring it. Any further questions or comments?

Mr Parker: Mr Chairman, I just want to register the comment that I support recommendation 7, as amended. The Chair: Okay, we're going to be voting on that.

Mr Parker: I think the rationale for that has been well articulated in this group already. I don't know if there's any suggestion that we should pursue another course, but if the committee is inclined to vote on the point, I am happy to go straight to the vote.

The Chair: For clarification, we're voting on recommendation 7, as amended. Those in support? That's carried unanimously. Thank you.

We had number 13, if I may draw your attention, dealing with jurisdiction, a schedule of organizations. It's a pretty straightforward one.

Mr Hoy: I'll go back to the comments I made prior, before this recommendation was stood down, that there is a danger, or some feel there is a danger, about making lists and then having an incomplete list of agencies. That is one concern. As governments create certain bodies and evolve over time, a list could be incomplete. It's something we should be aware of. We certainly wouldn't want the public to be shortchanged or omitted from anything the Ombudsman might look at, as a court of last resort.

My recollection is that we had quite a discussion on recommendation 13 at our last meeting and this question of list omissions, what is the scope or what should be the scope of a list as it relates to changes in government agencies, boards or commissions. We have to be very careful not to have omissions to a list.

Mr Parker: The rationale for this recommendation is well expressed in the 1993 report. It has been the observation of previous ombudsmen that unnecessary time and effort has been spent in trying to determine whether a particular agency belongs within or outside of the general description contained in the act. The recommendation came forward that in order to eliminate confusion or debate in those areas, the government has the option of just listing certain agencies so that it's clear those agencies are in.

I appreciate Mr Hoy's concern that by listing agencies that may be in, you may create the risk that an agency may be deemed to be off or out of the category if it's not included in the list. That's only if the items on the list must be read ejusdem generis — and I'm looking at the Hansard reporter as I say that — with the other elements on the list. I'm suggesting that is not necessary, given that there is a general category set out in the act already. It's not suggested that the list would replace the general category; it would exist to give greater particularity. It would be in the sense of, "Agencies would include but not be limited to the following," with the clear indication that there is the potential that an agency, although not listed, may still fall within the category.

I appreciate the concern Mr Hoy raises, and it's appropriate that we be alert to that concern. I think that concern is adequately addressed by the fact that there is a general description still in the act, and it's not suggested to do away with the general description, merely to supplement it by a list in order to remove any ambiguity at all about certain identified agencies.

I think the recommendation as it stands is a good one. I think it's there to avoid confusion and to help the process. I think it is satisfactory in its current form.

Mr Len Wood: I'm looking at some of the notes here. When the original recommendation was brought forward, we weren't faced with a lot of the privatization that is taking place now. Is the Ombudsman still going to be able to look into these areas? I'm talking about the privatization of jails, the privatization of the summer and winter maintenance of highways and roads and privatization of a lot of other organizations, even though they're being paid 100% by taxpayers' money. Do they still come under government agencies for the Ombudsman to look into?

When you see that the government could be privatizing 50% of their operations that were not privatized before, where does the Ombudsman stand if there are complaints coming forward from MTO, the jails and a lot of other organizations that the government is leaning towards privatizing, even though they've backed off on some? They backed off on the liquor stores because of the huge profit that is being made from them, but there is still TVO and a number of others that people are very nervous about, whether they're going to be privatized and whether the Ombudsman will still be able to look into these agencies. Those are the notes we have had, because we have had different members from our caucus sitting on the committee.

The Chair: I think it's a good debate so far. Recommendation 13 really is intended, as Mr Parker has

suggested, to clarify. How best that's done could be left to further refinement or definement.

I think the intent is purposeful, because there are exclusions today, ie, children's aid societies, hospitals and municipalities. As opposed to having a schedule of those included, it might be easier to have a list or schedule of those excluded. Any further questions or comments?

Mr Len Wood: You mentioned municipalities. There has been some concern over the last four or five years that there should be an ombudsperson, especially for municipalities. Maybe these are areas where another office should look after just the privatization, because municipalities are going to be privatizing as well. Work that was normally done and paid for by taxpayers is still going to be paid for by them. I just wanted to get on the record that maybe this is an area this government or another future government should be looking into.

The Chair: Just responding, it is the advice from the clerk that discussion has been held, and today, as it exists under the Municipal Act and other governance laws, the municipalities are quite able to institute that kind of role in the municipality today. Someone is paying, and I suspect it's the same person.

Any further discussion on recommendation 13? There being none, I'll call the question. All those in support? That's carried unanimously.

I've got one more here, recommendation 18.

Clerk of the Committee: We set that aside because of 44.

The Chair: Okay, 44 being an all-inclusive recommendation, number 18 is really similar. Any questions or comments on recommendation 18? It refers to recommendation 44, which we have already passed unanimously. Any further questions or comments on recommendation 18?

Mr Parker: I'll just venture the comment that at present this committee, I think all of us, labours under a bit of a difficulty in that the provisions in the standing orders relating to this committee are not mirrored in the Ombudsman Act, and that creates the inherent ambiguity as to the authority of the standing orders. I see this recommendation as a means of addressing that ambiguity and clearing it up so that there is full consistency throughout. I think this is a helpful measure.

The Chair: Any further questions or comments as we conclude the discussion? There being none, I'll call the question. Those in support of recommendation 18? It's carried unanimously.

I have a couple of other items of business I'd like the committee to consider. I believe each member has a copy of this on their desk. The first one is to continue the review, which we've just completed, and I thank you for that.

Item 2 is a series of proposed recommendations. "If the committee completes the writing of the report today, the committee should consider the following motions," which I would ask you to review. There are four of them in front of you, giving the subcommittee authority to finalize the wording of the committee report and send it to be printed.

Mr Bill Murdoch (Grey-Owen Sound): So moved.

The Chair: Recommendation (a) moved by Mr Murdoch. Any questions or comments on that? There being none, I'll call the question. Those in support? It's carried unanimously.

Motion (b) is the same but to do it in French.

Mr Pettit: Moved.

The Chair: Moved by Mr Pettit. All those in support? It's carried unanimously.

Motion (c) -

Mr Jack Carroll (Chatham-Kent): So moved.

The Chair: — moved by Mr Carroll. Any questions or comments? All those in support? It's carried unanimously.

Motion (d) is that the Chair be authorized to schedule the review of denied cases presented, and this would be the next meeting.

Mr Pettit: Moved.

The Chair: All those in support? That's carried unanimously. I'd like to thank the members of the committee.

We have one more order of business. The clerk is helping us along here, as usual. In the interests of time and input, we have a series of reports, most importantly the 1993 report, also the working report and the March report, which we have been using exclusively during these discussion. Previous committee members have spent a lot of time, in all respect, very productively and well intentioned, coming up with a consolidated, unanimous report. What we're trying to do is title or frame the report which we're intending to present to the Legislature from this committee in August. Is there any comment or input? I believe the covering document should clearly respect the work that has been done by previous committee members. A lot of work went into this, and I mean that sincerely.

Mr Parker, as former Chair of this committee, do you have any proposal or recommendation for the direction of the clerk and researcher to frame this final report? Would you like the word "final" in it? I would.

Mr Parker: I have no specific recommendation, but I am supportive of your suggestion that whatever title we have, we acknowledge the work that's gone on over the years in achieving the document we have now approved. This is not just the work of the members of this group; it's the work of the members of this committee throughout this parliamentary term, and more than that, the work of the previous Parliament. I think it's appropriate that be recognized in whatever final title we arrive at.

The Chair: I'll make a suggestion, with the permission of all three parties. I wouldn't mind the listing of members who participated in this process inside the covering report, which would cover that. I mean that complimentarily, because the intention is well argued that this is a positive report to be a partner with the Ombudsman's role. With that suggestion, the researchers can probably — yes, Mr Wood?

Mr Len Wood: I would go along with that as well, because it's over four years now, two years that the previous government struggled with the 1993 report and now two years with this government, and we have finally got it concluded. A lot of members put a lot of effort into it. I'm talking about all three political parties, where there was a majority for a couple of years from the NDP and now from the Conservative caucus, and we see changing faces even with this government over the last couple of years, as in the two years previous, as well as the Liberal caucus. I agree that all the people who have been involved in the committee and struggling with this should be named in the report.

The Chair: We're going to pursue that.

Mr Hoy: The subcommittee has been given authority as to the finalization of the wording of the report, but I agree with what has been said here, that we should include all reports, working papers, listing of names of persons who came before the committee as well, similar to what's in the other report, and that we actually did have a full hearing on prior considerations of the Office of the Ombudsman. I concur with you, Chair, that we have a full accounting of what we have done. I agree with you in general terms, and I think the subcommittee can work out the final wording, which will include much of what we believe we want here today.

The Chair: I think we've matched that well. Great, we've got some direction. Is there any date we'd like to meet with the subcommittee? It will be in August. We won't be convening over the summer if we can avoid it. We have other business to attend to.

**Mr Len Wood:** We're not meeting next week? Nothing next week?

The Chair: No. We are in hopes that next week we'll be working towards the —

Mr Marchese: I came to extend this to 12 o'clock.

Mr Ouellette: I move that we adjourn.

The Chair: Moved by Mr Ouellette that we adjourn. All those in support? We're adjourned.

The committee adjourned at 1051.

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#### **CONTENTS**

### Wednesday 25 June 1997

Review of the Office of the O	mbudsman
STAND	ING COMMITTEE ON THE OMBUDSMAN
Chair / Président:	Mr John O'Toole (Durham East / -Est PC)
Vice-Chair / Vice-Président:	Mr Trevor Pettit (Hamilton Mountain PC)
Mr Dave	Boushy (Sarnia PC)
	Crozier (Essex South / -Sud L)
	Hoy (Essex-Kent L)
	Johnson (Brantford PC)
Mr Jean-Marc	Lalonde (Prescott and Russell / Prescott et Russell L)
	Leadston (Kitchener-Wilmot PC)
Mr Rosario	Marchese (Fort York ND)
Mr Allan K.	McLean (Simcoe East / -Est PC)
Mr Bill	Murdoch (Grey-Owen Sound PC)
Mr John R.	O'Toole (Durham East / -Est PC)
Mr Jerry J.	Ouellette (Oshawa PC)
Mr John L.	Parker (York East / -Est PC)
Mr Trevor	Pettit (Hamilton Mountain PC)
Mr Len	Wood (Cochrane North / -Nord ND)
Substitutions present /	Membres remplaçants présents:
_	Carroll (Chatham-Kent PC)
Clerk / Greffier:	Mr Franco Carrozza
Staff / Personnel:	Mr Andrew McNaught, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 17 September 1997

Standing committee on the Ombudsman

Case of Mr H

## Assemblée législative de l'Ontario

Première session, 36e législature

### Journal des débats (Hansard)

Mercredi 17 septembre 1997

Comité permanent de l'ombudsman

L'affaire M. H

Chair: John R. O'Toole Clerk: Tonia Grannum Président : John R. O'Toole Greffière : Tonia Grannum

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 17 September 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 17 septembre 1997

The committee met at 1007 in committee room 2.

#### CASE OF MR H

Consideration of the Ombudsman's case report in the matter of Mr H and the Ministry of Finance.

The Chair (Mr John O'Toole): This morning the intention is to review the matter of Mr H and the Ministry of Finance. In the information provided for them, members were given the case material. If there are any people who don't have a copy of that with them or forgot their notes, there are extra copies, I believe.

I might point out for the members of the committee that we have a new clerk. I guess it's a permanent change. Tonia Grannum is with us. In the future if you have any questions on matters, direct them to her.

This morning we're pleased to be joined by the Ombudsman. Unless there are opening questions or comments by any of the members of the committee, we ask the Ombudsman to open with her comments.

Ms Roberta Jamieson: Good morning. Bonjour. Sago. Nice to see you all this morning. I believe we've given the remarks to the clerk, or we certainly will do that if we have not, so that members can have a copy of the presentation.

First, it's a pleasure for me to be here to meet with the committee at any time, but this morning we're here to consider a case report in the matter of Mr H and the Ministry of Finance. We are here this morning to consider my final report in the matter of Mr H and the Ministry of Finance. It is a case report that I have tabled with the Legislature, through the Speaker. Of course the usual practice has been to make the names of the individuals involved anonymous to maintain their confidentiality, and we have done so.

As you may know, when a report like this is tabled with the Legislature and brought to the committee, it is the last step that's open to me in the procedures set out in the Ombudsman Act. I then will have investigated this matter and raised and discussed it with the head of the government organization concerned. I will have advised the minister responsible. I will have notified the Premier of my conclusion and recommendation.

Then, as Ombudsman, since I don't have the power to compel any agency to implement my recommendations, it's now in the hands of the Legislature to do as it sees fit. So through this committee, having exhausted my role, I am

now seeking this committee's support of my recommendation so that the Legislature can take broader action to ensure this matter is put right.

It also gives the public an opportunity through the committee hearing to lend its scrutiny to the issues of unfairness, which I will raise.

Today I think the case really reflects the reality that equal treatment isn't always equitable treatment. This one is a pretty classic case, where ignoring the diversity of circumstances in our population and treating everyone as if they were the same, regardless of difference, really produces an outcome of unfairness and inequity. Such is the case of Mr H.

Mr H is a member of a first nation and lives on an Indian reserve in the province of Ontario. He decided to start a business wholesaling unmarked cigarettes to first nations merchants on reserves. When Mr H applied to the ministry for the necessary permits, he was advised that he would have to post a security bond of \$500,000 as a condition. Although it's the ministry's standard practice to require such a bond, this requirement had an impact on Mr H that is not experienced by non-first nation applicants.

Mr H does not have sufficient assets located off reserve to serve as collateral for a bond. Because of section 89 of the Indian Act, his property located on reserve is not subject to mortgage, charge, seizure or execution by any person other than an Indian or band, as defined in the Indian Act. As a result, the banks and insurance companies he approached, trying to meet the ministry's requirement, were not willing to provide the necessary security.

Mr H's inability to obtain a bond is not extraordinary. It has been recognized for some time that section 89 of the Indian Act presents a barrier to first nations engaged in commercial activity. The problem, for those of you who have reviewed the royal commission report on aboriginal peoples, was most recently raised in that document.

The ministry is aware of Mr H's predicament; however, it argues that the bond requirement is necessary to safeguard the province's revenues, preserve the integrity of the marketplace, deter unlawful activity and treat all applicants in a similar and consistent manner.

In the scheme of tobacco taxation, wholesalers are designated or considered by the ministry as collectors who are responsible for collecting and remitting the appropriate tobacco taxes. The ministry has indicated that if Mr H were to become a wholesaler, he would potentially hold

tax revenues in trust for the ministry and that the ministry would be at risk of losing revenue if it didn't obtain a bond. The ministry, in supporting this argument, has referred to a case where in fact significant revenues were lost as a result of the ministry's failure to obtain a bond.

I appreciate the ministry's rationale for the bond requirement in situations where wholesalers handle substantial funds in trust for the ministry, but it is also clear that Mr H is a very unique situation and what he is proposing is unique as a result.

Mr H only intends to sell unmarked cigarettes to first nations retailers within the limits established by the quota system. In these circumstances, no tax would normally be collectable. The ministry has also said there are no other businesses operated in this way.

The ministry has also acknowledged that Mr H's proposal would generally not involve collecting tax revenue. However, it has suggested that there is a potential for tax liability to arise as a result of theft, fire or inventory accounting problems.

In my view, the circumstances of H's case don't involve the kind of significant risk that underlies the ministry's general bond requirements. In addition, it would be possible for the ministry to place conditions on the permits it issues to Mr H to reduce the risk of potential loss for those contingencies like theft and fire and inventory accounting.

The ministry has also pointed to the deterrence of unlawful activity as a reason for the bond requirement. Although the ministry has stated repeatedly that it has no reason to question the personal integrity of Mr H, it notes that unlawful sales could occur, for example, through a sale above quantities specified by the allocation system set out by the ministry, or to unauthorized first nations retailers. It seems to me that any potential unlawful activity is a normal enforcement issue and something to be dealt with by the ministry and other law enforcement authorities as an enforcement issue. Again, it is open to the ministry to include safeguard provisions which are not monetary in any permit it issues to Mr H.

The ministry has also indicated that it requires Mr H to post a bond to preserve the integrity of the marketplace and to treat all applicants equally. I understand the ministry's desire to treat applicants equally; however, an equal approach is not always an equitable approach. When the ministry states that it is applying the Tobacco Tax Act equally, the fact remains that first nations people who live on reserves, and who are therefore not able to have their on-reserve assets held as collateral for the purposes of obtaining a loan or a security bond, are in a very different situation than non-first nations people whose assets can be attached without restriction.

#### 1020

I have, as a result, concluded in my investigation that treating people who live on reserves and who are bound by the Indian Act in the same way as those who do not live on reserves is inequitable and, in this case, improperly discriminatory. Furthermore, I believe the policy of the Ministry of Finance with respect to this issue in fact con-

stitutes systemic discrimination. For while the ministry's decision to treat all applicants in the same way may appear neutral on its face, this practice has an adverse impact on a group of people who share something in common not shared by the general population; that is, they're all first nations people.

When I look at this issue, it's clear that the intent of the policy the ministry has adopted is of no consequence. It is the discriminatory effect of the policy that is at issue. So I'm not saying the ministry intends to discriminate. I am saying that the effect of its policy is to constitute systemic discrimination.

It's important to note that the Tobacco Tax Act does not require that all applicants for permits under the act post a bond. The act provides that the minister "may" — it does not say "shall," it says "may" — demand security from applicants for unmarked cigarette dealers' permits. The minister also has the specific discretion to increase or decrease the amount of security required. Both these areas which provide freedom for the minister are located in section 12 of the Tobacco Tax Act. The legislation, then, provides the minister with the flexibility to decide whether to require security or to establish an amount of security lower than that generally required.

I should say that in the case of collectors who were already operating in the business when the security provisions came into effect, the bond provisions, and who had satisfactory records of compliance, no security has been required. In fact what they did was kind of grandfather, which is a term that's sexist we still use in the law. They grandfathered the permits that were already out there. They said for those already operating, you don't need to post this bond, so they already have exercised a discretion. That confirms the ministry's scope for applying its requirements differently according to the individual circumstances of applicants, while at the same time maintaining their administration of the act on the basis of the principles in the act.

In the case of Mr H, this might mean, for example, setting the amount of the bond so that it reflects the amount of tax to be ordinarily collected, and I have said, as I've said earlier, that is zero.

As to the ministry's other argument, that they need to continue this practice to preserve the integrity of the marketplace, in my view the integrity of the marketplace is not protected by a practice which results in systemic discrimination against a group of people who, because of the application of federal legislation, cannot ever obtain and post security bonds.

Mr H's case is not about allowing him to gain an advantage over others. It is about levelling the playing field so that he can enter the marketplace on an equal footing with those who are not subject to the Indian Act. While the Indian Act was intended to provide protection for first nations in certain circumstances, the result of its application in this case is to create a barrier to commercial activity. The only marketplace that is being protected here is one which is absent first nations wholesalers who live and locate their assets on reserves, and by not taking

action to counteract this effect, the ministry is perpetuating systemic discrimination.

The ministry has also raised a number of legal issues relating to this case, which I have addressed in great detail in my case report, which I believe you all have a copy of. Quite simply, none of the cases cited stand for any principles which would prevent the ministry from implementing my recommendation. Fundamentally then, I'm not persuaded that the ministry is not in a position to put this matter right by implementing the recommendation or that the recommendation should be changed.

There is a problem in this case in the intersection between federal and provincial legislation. On the one hand, the Tobacco Tax Act allows the ministry to require a bond from Mr H, while at the same time, as a result of the Indian Act, Mr H is prevented from obtaining a bond. I don't agree, however, with the ministry's suggestion that this is a matter that should be left for resolution at the federal level. The ministry cannot abdicate its responsibility to administer the Tobacco Tax Act in this province fairly and equitably by simply deferring to the federal government to take the lead.

Although changing federal legislation might resolve the issue, it is not necessary. In this case, the discretion already exists to devise a fair and equitable solution to Mr H's situation, without the need to change the Indian Act. We don't have to resolve all of the issues relating to the first nations in Canada in order to properly redress Mr H's permit application. I believe his case is particularly compelling. He intends to sell cigarettes only in circumstances where tax would not normally be collectible, and the ministry is clearly empowered to draft conditional terms for permits to meet its concerns.

In the interest of removing barriers to the operation of a fair marketplace and eliminating the discriminatory effect of its policy, the Ministry of Finance should make an accommodation for Mr H. Accordingly, I am seeking this committee's support for my recommendation that the Ministry of Finance reconsider Mr H's application for a wholesale dealer's permit and an unmarked cigarette dealer's permit.

I'm very pleased to answer questions if the committee members have them.

The Chair: Very good. I'll open it to members of the committee if anyone has any questions on Ms Jamieson's presentation.

Mr Rosario Marchese (Fort York): Can I ask something, Mr Chair? We're asking questions of the Ombudsman at the moment, and she's not coming back for other questions. Is that the way it's going to work? Then we listen to the ministry's arguments and we ask them questions?

The Chair: Yes, if you have clarifications, perhaps after, we could through the clerk —we could attempt to resolve them in this meeting. Does anyone have any specific questions?

Ms Jamieson: Can I just clarify?

The Chair: Yes.

Ms Jamieson: Normally the way we've done this in the past is, I present, you ask questions, the ministry presents, questions are asked, and then there's an opportunity for me to return and make any further comments or respond to further questions.

The Chair: Sort of a summation from both parts, if necessary?

Interjections.

The Chair: That sounds good. It's more clarity. Great.

Mr Jean-Marc Lalonde (Prescott and Russell): I have one question to start with. Madam Ombudsman, on page 2, "Mr H only intends to sell unmarked cigarettes to first nations retailers within the limits established by the quota system." Who would those retailers be selling the cigarettes to?

**Ms Jamieson:** I'm not sure which page 2; of the final report that you're referring to?

**Mr Lalonde:** The one that you just presented to us, September 17.

**Ms Jamieson:** As opposed to the remarks, okay.

**Mr Lalonde:** That's the one you were reading.

Mr Marchese: Are you referring to this?

Mr Lalonde: No. The one we just got, the one she was reading, page 2 of the document that was just distributed to us.

Mr Jerry J. Ouellette (Oshawa): Paragraph 3.

Mr Lalonde: Paragraph 3, yes.

1030

Ms Jamieson: As I understand it, there is a quota system that's established for how many cigarettes can be obtained by first nations retailers, and then they are sold in stores. The quotas, it is understood, do not attract tax and they are sold in stores in the communities.

Mr Lalonde: When you say, "in the communities," do you mean within the reserve of the first nations?

Ms Jamieson: Yes.

Mr Lalonde: At the present time, I don't have any more questions.

**The Chair:** Any further questions from members of the committee on any part?

Mr Wayne Wettlaufer (Kitchener): The concern I have, and I've just had a chance to look over this today, I go back to my days as an insurance broker. We didn't provide bonds for Indians. I appreciate that. I appreciate the reason for it, that if one of the native Indians were to have a shortfall in the inventory, then of course we could not attach to any of his or her properties. This seems to me to be a concern that should be more addressed at the federal level of government, because it is expressly under the Indian Act, as I understand it, that one cannot attach to the native people's properties. The provincial government has laws regulating the collection of taxes. That's there for everyone.

I think I saw in here you called that systemic discrimination. There's discrimination at all levels of society. There can be very valid reasons for discrimination. Again going back to my days as an insurance broker and as an insurance executive, I can remember when the previous government was considering mandating

one price for all. It was found that it wasn't appropriate because that was reverse discrimination, because the automobile insurance rates were set on the basis of experience. So you have some discrimination. No matter how you applied the automobile insurance rules and regulations, somebody was going to be discriminated against.

In this case we have a situation where the provincial Ministry of Finance is regulating tax collection and the method by which tax collection will be assured, ie a security bond, for the protection of all. However, this runs contrary to or afoul of the federal Indian Act. So the problem is the federal Indian Act, not the provincial finance laws.

Ms Jamieson: That certainly is an issue. The member raises an issue that the ministry has raised. Frankly, I don't think it is a federal problem; I think it is a matter of an intersection between two acts, no question, but I don't think the solution need be to throw it to the federal government to figure this out or to change the Indian Act. It is within the power of the minister under the current provisions of the Tobacco Tax Act to correct this unfairness.

The way it currently operates — and again, I'm not saying there is an intention to keep first nations people out of this business, but that's the effect of the minister's policy at the moment, because if you require a bond from those who will never be able to post a bond, you're effectively denying them entry on to the playing field in the marketplace. That's what's happening here. It is the effect of the policy that does constitute systemic discrimination, because you've got a group of people, first nations, who have their assets located on reserve, who will never be able to qualify unless they leave the community, locate off reserve and create attachable assets there. To me, to make that requirement is systemic discrimination. I think it's within the power, and it certainly would be a matter of equity and fairness, should the minister interpret this act in a way that would allow him to accommodate the situation of Mr H.

And it has been done. No bond is required from every person in the wholesale business at the moment. When the provisions came in, they did not require it of those who were already in the business. I just want you to remember that exceptions have already been made for a good reason, and here is another good reason.

Mr Wettlaufer: Well, there are grandfather clauses provided many times and certainly history is a good reason for granting grandfather clauses, ie the person or the corporation has demonstrated that he or the corporation will provide payment of the taxes. There's a history there, so it's a bona fide reason for allowing an exception.

However, we've got someone new coming on the scene. There is no bona fide reason that I can see for granting an exemption. It may be discrimination, but the problem is not provincial, the problem is federal. If that person could obtain a bond, then there'd be no problem. The reason he can't obtain a bond has to do with the federal Indian Act.

Ms Jamieson: While I appreciate the member's comments, there is a problem with the Indian Act that's been recognized widely, but it is not necessary for the Indian Act to be dealt with for the minister to treat Mr H equitably and fairly in this circumstance. There is ample room for discretion. There is a very good reason for exercising it, and not to do so is to exclude H from the market place, is to treat him unfairly.

The Chair: I believe that's the essence of the question in the committee's deliberations.

Mr Marchese: I just wanted to explore the three arguments with you, with the ministry, and then see if I have them all correct in my mind, and then you can comment on them again. The three points they make is that the ministry is worried about its generation of revenue and that this could affect it somehow. You made the point that there is no collection of revenues in this case because he would be selling within the reserve. So that argument really should not be a concern. I suspect that's not the sole, central argument that the ministry would make in defence of this.

The other one is that it could lead to unlawful activity, and you pointed out that, as with any activity, that is the job of provincial government, to enforce its rules. In this particular case, it could, you were pointing out, exercise its power and deal with measures of security or unlawful activity. It's no different from any other activity.

The third argument is that the ministry says it is committed in terms of tax administration practices and policy to equal treatment and fairness of all taxpayers. I think this is where the argument that you're making is, where we think the ministry should deal with this case differently than all others. The fact of the matter is that the situation is not equal. We would like to try to make it equal, but it is not equal. The fact of the matter is that this man is on the reserves. He's not off reserves.

The question is how you treat the situation in a way that brings about some equality. To simply say the federal government is to blame because that's what the act says, and it's too bad that it provides impediments and possibly sometimes some benefits — in this case it is an impediment to this individual to be provided with equal opportunities. So the point is, as Judge Abella said, sometimes you have to do unequal things to come to an equal situation. I think this is where your argument says in order to treat this fellow equally, we have to look at this matter differently, and the ministry has the power to deal with that in a way that it brings about an equal outcome. That's basically the argument, right?

Ms Jamieson: That's precisely the argument.

**The Chair:** That's a very nice summation. Any further questions?

**Mr Ouellette:** How are the current retailers on the reserves obtaining their supplies?

Ms Jamieson: From those who currently hold permits to wholesale.

**Mr Ouellette:** So this would be the first situation where this has ever come forward? This has never happened? We don't have any other individuals who are on reserves who currently are wholesalers?

Ms Jamieson: That is correct.

**Mr Ouellette:** How many suppliers would there be currently, do you know?

**Ms Jamieson:** I don't have that information. I'm sorry. Clearly, as I understand it, the ministry has acknowledged this is the first such case.

1040

The Chair: If I'm permitted, I would suggest my understanding from what you've presented to us is that — and I have one question, when did this requirement for the bond come into effect?

Ms Jamieson: I believe it was 1992.

The Chair: And anyone who was a wholesale distributor of unmarked at that time was exempted.

**Ms Jamieson:** Of course there were no first nations people at that time either.

The Chair: There have been none exempted under this? There have been no exemptions?

Ms Jamieson: Not that I understand.

The Chair: Have there been any applications?

**Ms Jamieson:** Well, this one. Other than this one, not that I'm aware of.

The Chair: So no one's paying it, or has the bond?

**Ms Jamieson:** No first nations people with assets on reserve have obtained a permit to do this sort of thing.

The Chair: Before or after the law. Well, it wasn't a requirement before. Okay, I don't have any questions. Mr Ouellette, any concluding question?

Mr Ouellette: Yes. Is this just in Ontario? Obviously if it deals with the federal act — have you researched other provinces and what has taken place there?

Ms Jamieson: I have not. I have solely looked at the case of Mr H and the Ontario Ministry of Finance because that is my jurisdiction to look at.

Mr Ouellette: Just being that the Indian Act deals with all provinces and territories, I wondered if there were other cases there. Obviously you don't know. Thank you.

The Chair: I would call on the representatives from the Ministry of Finance.

Mr Graham Stoodley: Good morning. My name is Graham Stoodley. I am the director of the legal services branch for the Ministry of Finance. With me is Roy Lawrie, the assistant deputy minister of taxation. With the committee's permission, Mr Lawrie will outline some of the practical administrative issues that arise in this case. I will speak to you later and, I am grateful to say, briefly on the legal issues as they have been canvassed with the Ombudsman.

The Chair: Thank you. You can remain seated during the deliberations this morning. Mr Lawrie, you're going to make the presentation?

Mr Roy Lawrie: Yes. Good morning, Mr Chair and members of the committee. As Mr Stoodley said, my name is Roy Lawrie and I am assistant deputy minister, tax division, in the Ministry of Finance. In addition to Mr Stoodley, I have with me Mr Pat Doherty, senior manager, operations, in the motor fuels and tobacco tax branch of the ministry. I propose to make a short statement of the ministry's position in this case, following which Mr

Stoodley will summarize the legal position of the ministry. We shall then be pleased to answer any questions that committee members may have.

In order to provide some context, I shall briefly describe the way in which Ontario's tobacco tax is administered, as well as outline the allocation system used to control the exemption from tobacco tax which is a right of first nations people. Tobacco tax is collected from consumers by retailers who pay the tax to designated tobacco wholesalers for remittance to the Minister of Finance. Eighty of such designated collectors currently remit tobacco tax on cigarettes to the ministry.

The cigarette manufacturers supply the ministry with a monthly tax memo which details sales of cigarettes to collectors. Such sales from manufacturer to collector are made at a price which does not include the Ontario tobacco tax. The ministry uses the tax numbers from the manufacturers to verify the tax liability of each collector as reported on their monthly tobacco tax return.

The only exemptions from tobacco tax are for first nations people purchasing on reserves and for diplomats resident in Ontario. While taxable cigarette stock is marked — the familiar yellow tear strip on the pack — tax-exempt stock sold to first nations people and diplomats is unmarked. It is a clear tear strip.

Sixteen of the 80 tobacco tax collectors also sell unmarked cigarettes to first nations people. This requires possession of a permit to deal in unmarked cigarettes. The 20 geographic locations of these 16 dealers in unmarked cigarettes are shown in the handout we brought with us; on the reverse are a few statistics relating to tobacco tax.

The allocation system for unmarked cigarettes was created to ensure that first nations consumers received the tax exemption and that all others paid tax. The system takes into account the on- and off-reserve adult population of first nations and the smoking patterns of first nations people in Ontario, as reported in the 1991 Aboriginal Peoples Survey by Statistics Canada.

Briefly, allocation limits are set annually for each reserve, based on the previous year's adult population statistics supplied by the federal government. Each authorized retailer on a reserve is assigned a share of this allocation. Those collectors who hold permits to deal in unmarked cigarettes are responsible for ensuring that retailers do not purchase cigarettes in excess of their allocation. Allocations are increased by an additional 10% to allow for special occasions on the reserve, such as powwows, and by a further 20% for band councils which enter into a written agreement to assign the allocation among the band's retailers and to monitor the tobacco sales by retailers on the reserves.

Currently, 33 of Ontario's 117 reserves have controls upon their supplies of unmarked cigarettes; the other 84 have no controls. Through the monthly tobacco tax returns of the 16 dealers in unmarked cigarettes, sales of exempt product to all reserve retailers are monitored for anomalies and quantities clearly disproportionate to reserve population. In much the same manner as tax memos from cigarette manufacturers are used to monitor compliance by

1050

collectors, information from the tax returns of dealers in unmarked cigarettes is used to monitor the quantities purchased by first nations retailers in order to identify possible abuse through sale of unmarked product into the taxable market.

Turning to our security requirements, in 1992 the federal government amended the Bankruptcy Act to remove provincial crown priority over secured creditors in bankruptcies. Previously, funds held in trust for the province by commodity tax collectors had priority over the claims of secured creditors. Even with this advantage, there had been multimillion-dollar losses suffered upon the insolvencies of two tobacco tax collectors. In order to minimize future losses, the ministry was given statutory authority to require security from designated collectors and from dealers in unmarked cigarettes. For collectors, minimum security was set at \$1 million, and for those permitted to deal in unmarked cigarettes, an amount of at least \$500,000.

Since 1992, all new collectors and dealers in unmarked cigarettes have been required to post security of these amounts. The ministry believes that it would be inconsistent and unfair to collectors and dealers who have posted the required security if exceptions were to be made for anyone. Giving Mr H an exemption from the requirement of a minimum \$500,000 security would give him an unfair business advantage over those who have posted and have been required to maintain the \$500,000.

There are many ways in which tax revenue can be lost to the province, even by a dealer in unmarked cigarettes selling only to first nations retailers on reserves: Sales can be made in excess of allocation to retailers on a reserve under allocation; sales can be made to unauthorized retailers; sales can be made to retailers on reserves not under allocation, but in quantities so large that intended diversion to the taxable market is unquestionable; poor record-keeping can make it virtually impossible to determine whether or not the eventual consumer is entitled to the exemption; thefts and unaccounted-for sales can conceal diversion of unmarked product to the taxable market.

Without security, the ministry has no recourse against a dealer in unmarked cigarettes who permits abuse of the exemption. With security, the ministry can protect itself from tax losses which can occur as a result of unmarked product being sold to those not entitled to the exemption; it can assess the dealer for the tax associated with any significant quantity of unmarked stock which has not been accounted for and obviously immediately collect because of the security.

The ministry is also concerned that if Mr H were exempted from the requirement to post security, there might well be a resulting proliferation of wholesalers, with serious implications for the costs of administration and the risk of revenue losses. Since Mr H's inquiries, the ministry has received four separate inquiries from other first nations people interested in wholesaling unmarked cigarettes. Full details of the conditions which would

apply to the permit, in addition to the security requirement, have been supplied.

There has also been an inquiry from an existing wholesaler interested in now selling unmarked who was similarly informed of these necessities. As an existing wholesaler in 1992, he was not at that time required to put up the \$1-million security, but in order to expand his business into unmarked cigarettes, he will have to put up the \$500,000 minimum as well.

The requirement to post \$500,000 security has not caused adverse comment from any of these five different groups that have expressed interest.

To summarize, the ministry's position is that maintaining the posting of a minimum of \$500,000 in security for new dealers in unmarked cigarettes is essential to treat all applicants in a consistently fair manner and to preserve the integrity of the tobacco tax system.

The Chair: Thank you very much, Mr Lawrie. As a first question, do you have a copy of your presentation?

Mr Lawrie: Yes.

The Chair: I would ask the clerk to make sure, if members are interested, that they have questions. I'll open up questions to the committee.

Mr David Tilson (Dufferin-Peel): I'd like to ask a question with respect to section 12 of the Tobacco Tax Act, which has been referred to, and specifically this is the security section. Obviously it's discretionary that the —

Mr Lawrie: It uses the words "the minister may require security."

Mr Tilson: Yes. So it is discretionary. Speaking generally across the province, can you tell me about the exercising of the minister's discretion as to when a bond or security would be decreased or eliminated entirely? Can you tell me — obviously not giving me specific examples; I think that would be inappropriate — at least the rationale as to whether that ever happens, whether you say: "In certain cases you won't have to have a security; you won't have to have any security," or "In certain cases it won't be half a million dollars; it'll be something substantially less, depending on the circumstances"? Can you give me some history about what has gone on in the province?

Mr Lawrie: With respect to the minimum security requirements of \$1 million for a collector —

Mr Tilson: I'm sorry. You're right: a million, yes.

Mr Lawrie: — and \$500,000 for a dealer in unmarked cigarettes, there has been no occasion on which those minimums have been reduced in any way.

Mr Tilson: Anywhere in the province.

Mr Lawrie: Anywhere. Since 1992.

Mr Tilson: Are there regulations — I'm sorry. I should let you finish.

Mr Lawrie: There is a caveat to that. There are minimums. For example, a collector is subject to security of \$1 million or the tax value of the average of three months' sales, whichever is greater. In one instance where a collector had to put up considerably more, many millions of dollars more in security than the \$1 million because they're a large collector, after two years of putting up this security they came to see us and argued that there was too

much security required, given the way in which they did business. As a result of negotiations, we reduced their security somewhat. As I recall, it was reduced by about a third, but it is still substantially more than \$1 million.

**Mr Tilson:** That's the only time this discretion has ever been exercised that you know of?

**Mr Lawrie**: It's been exercised in terms of the three months' sales and do we really need —

Mr Tilson: Yes.

Mr Lawrie: The minimum has never been reduced.

**Mr Tilson:** Okay. Can you tell me, are there regulations that assist the minister in exercising this discretion?

**Mr Lawrie:** With respect to the security itself, no. There's a regulation which permits the minister to operate the allocation system in place for regulating unmarked products on reserves.

Mr Tilson: I'm interested in what guidelines the minister follows or doesn't follow with respect to the discretion to reduce or completely eliminate — I'm not talking about history, I'm just talking about this section.

Mr Lawrie: There are no -

Mr Tilson: There are no guidelines?

Mr Lawrie: There is no set of guidelines; there are no written guidelines, even within the ministry, in policy. The established practice of the ministry is not to go below the basic minimums of \$1 million and \$500,000 respectively because they're regarded as providing a minimum level of minimization of risk of tax loss. That was the whole purpose of having them there in the first place.

I should also point out that although the existing collectors with a good history of compliance were grand-parented, if there's any change, any corporate reorganization in an existing collector, they become treated as a new collector and have to put up security as if they were new: for example, a merger of two or more collectors or a merger of a collector with another corporation outside. The overall intention of the ministry is eventually to have security from all collectors because of the very significant risks involved in commodity taxes where the tax value is such a large part of the end price of the product.

Mr Tilson: Notwithstanding the comments that were made by Ms Jamieson, I'd like to turn to the question of discrimination. Let's say the minister exercises this discretion and decides to reduce or completely waive the security on a particular reserve for whatever reason, perhaps for the reasons that are given by Ms Jamieson, I don't know. Have you got any legal opinions about someone off the reserve, someone who is not a member of the first nations, or it could be anyone, saying, "Listen, you're exercising your discretion on that particular reserve and that's discriminatory towards me"?

#### 1100

Mr Lawrie: I am not aware of a legal opinion on that, but common sense would tell you that a collector without security off reserves competing with a dealer in unmarked product on a reserve who didn't have to pick up security would feel that they are being hard done by and discriminated against if that were the case.

That's one of the concerns of the minister and perhaps the major one. After all, if you put in a security requirement, in essence it's inherently discriminatory because it discriminates against all people who don't have the kind of financial wherewithal to put up the surety bond or obtain a letter of credit. That's unfortunate, but it's inherent in having any sort of security requirement.

Our position is that with the security requirement it has to apply to all collectors in the same category, ie, all new collectors, to be fair. That's what tax administration is about. In order to perhaps redress, let's say there was a requirement that a first nations dealer on a reserve was not to put up the \$500,000. We would have to then go back to everyone else who has put up the security and give the security back to them to be consistently fair.

**Mr Tilson:** Perhaps we should give other members of the committee a chance. Thank you.

Mr Marchese: Mr Lawrie, I understand the practice and policy of equal treatment and fairness and that such should be applied to all, and I agree with that. I'm not sure that anybody here would disagree with that. But Mr H has a problem. He's on the reserve, and section 89, I think it is, prevents him from obtaining a bond and you require one. Can the principles of equal treatment be applied in this situation?

Mr Lawrie: The ministry position is that if you don't apply the same rules for everybody inherently, you're giving one putative dealer or a collector an advantage over another who doesn't put up security.

**Mr Marchese:** I appreciate that, but I'm trying to deal with the issue of the principle here.

Mr Stoodley: But there is, Mr Marchese, the reverse of that principle. Mr H is on the reserve. He cannot use on-reserve assets or he chooses — there's no way of seizing those assets because of the Indian Act.

Mr Marchese: Right.

Mr Stoodley: If he had off-reserve assets, they could be used to provide the security.

If I am not a native person and I am not on a reserve and I don't have enough assets to satisfy the bank's requirement, to satisfy the guarantee/surety company, I can't post the security either. The inequality part of the problem that the ministry has, aside from a basic disagreement with the Ombudsman as to whether or not our policy is systemic discrimination, for which the ministry is responsible, the basic issue, is that in this situation, because of the change the Ombudsman would ask for, Mr H on the reserve with no assets, say, could be entitled to a bond whereas a person off the reserve with no assets would have no case at all. He would be entitled to the bond not because he is ajudged a good or a bad security risk but entitled because the Indian Act of Canada prevents any person other than a band or an Indian from seizing assets on the reserve, an advantage that first nations people have, by law are entitled to enjoy and have maintained in spite of the commercial consequences of it.

There are in the Indian Act in section 89 examples where the federal government, in the case of leasehold interests of designated land and in the case of chattels sold

by conditional sales, has abrogated that exemption, I would guess for good commercial reasons.

I don't want to make the whole of my presentation in response to your question, but I wanted to rise to the issue that there is an inequality and the inequality is in the treatment of people who are not on the reserve and who have no assets, versus those who are and have no assets.

Mr Marchese: I do want to pursue it. I'm not sure that I can grasp it legally in all the ways you might be presenting it. If you are off the reserve, you have the ability to raise money and to have capital. You have the potential to do so. This fellow on the reserve has no ability to do so. He's prevented by that section from doing so. So we have two different situations. You will admit that is the case.

Mr Stoodley: He is not prevented from raising capital —

Mr Marchese: Off reserve.

Mr Stoodley: He can raise it off the reserve, yes. But you're right, if he wishes and he's entitled to do so, I agree, if he wishes to maintain his capital, either in real property or in liquid assets on the reserve, it is immune from execution and he will be unable, in the normal course of things, to get a bond.

Mr Marchese: Right. But the argument I make is that we've got a problem in terms of how we treat this situation, and that's why I raised the other issues the Ombudsman has raised in terms of the concerns you have, and that is the collection of revenues. But if he sells within the reserve, there is no collection of revenues — that was one. The other you've raised is the whole issue of the possibility of sales made in excess of the allocation, sales to unauthorized retailers, poor recordkeeping, thefts, so you have no recourse to deal with some of these problems, you were saying, including your fear about the proliferation of such wholesalers, should you make this exemption.

I'm assuming you have measures in place to deal with all of these concerns.

**Mr Stoodley:** And one of them is the requirement for that security.

Mr Lawrie: Actually, that's the principle. It's not the only method in which to ensure that a dealer in unmarked cigarettes doesn't turn a blind eye to a retailer diverting unmarked product into the taxable market. Obviously, if a dealer did not put up security and was resident on a reserve, in effect the judgement proof over any assessment made against a dealer for wittingly or unwittingly permitting diversion of unmarked product into the taxable market, the protection, if you like, is the security we require, although I hasten to add that the main reason for changing the security had nothing to do with potential dealers in unmarked from reserves. The reason for doing it was the change in the federal Bankruptcy Act and the very large losses we had suffered in a couple of cases.

Mr Len Wood (Cochrane North): Along the same lines, what the finance branch is saying is a collector should have to put up a bond for \$500,000. In this particular case, because the individual wanted to become a wholesaler and a retailer, his percentage of cigarettes that he's selling into the market is probably going to be 95%

or 98% non-taxable products because he's selling on reserve, and a very small percentage of cigarettes that are taxable.

I deal with wholesalers who are selling on the reserves and I know for a fact that when the orders come in, if they're a little bit different in any way from what the previous orders were, the wholesaler has to phone Sudbury and get permission to sell an extra five, 10 or 15 cartons of cigarettes on to the reserve, no matter which of the 10 reserves I represent. The way I'm looking at it is that this person is not necessarily a collector because probably 100% of his cigarettes are going to be non-taxable if he's selling them to retailers on reserves. For a lot of the reserves or most of the reserves, there's no way in and out other than by water in the summertime and by air in the wintertime or drive on winter roads. Some reserves are accessible by road, but not that many.

As Mr Marchese had pointed out, I'm concerned that this person, by federal law, is not allowed to own or use his property on the reserve as collateral, so he's being prevented from doing a job that he wants to do to be able to feed his family because of the Indian Act and the provincial demand that he put up \$500,000, but he's not allowed to use property he might own on the reserve as collateral.

#### 1110

Mr Lawrie: Yes. The ministry has sympathy for Mr H's case too, but on the other hand, we have an obligation to protect the province's revenues, and certainly in our view, virtually the only way to do that, to guard against unauthorized diversion of unmarked product into the taxable market, in this circumstance is to have security.

The Chair: Any further questions, Mr Wood? It's getting to the point of it. We have a question before I get back to Mr Tilson.

Mr Gary L. Leadston (Kitchener-Wilmot): I just wanted some clarification. In the report, this document that was submitted, you had indicated there were 16 locations.

**Mr Lawrie:** There are 20 locations from 16 dealers in unmarked cigarettes. Some of them have more than one location.

Mr Leadston: So there are 16 locations.

Mr Lawrie: There are 20 locations from 16 dealers.

Mr Leadston: Including the one in Quebec?

Mr Lawrie: Yes.

**Mr Leadston:** And in excess of one million cartons of unmarked cigarettes sold?

**Mr Lawrie:** Yes. The total unmarked market in Ontario is approximately 1.5% of the taxable market in terms of volume.

**Mr Leadston:** In the other document we have, prepared by the counsel and research officer within the assembly library, on their schedule they list nine locations with a total yearly allocation of cartons of just a little over 200,000.

Mr Lawrie: I'm not aware of it. I'm sorry.

**Mr Leadston:** Is there any reason there's such a significant difference? Is there anyone who could answer that question?

Mr Stoodley: Perhaps the counsel who prepared it.

The Chair: I believe it's based on what we've been told is a quota allocation, Statistics Canada. Mr Leadston, there is a quota allocation, if I understood, that's developed from Stats Canada of the first nations inhabitants etc, derived down to the number of adults, which entitlement plus 10% for other on- and off-reserve locations, 20% — so they come up with an allocation. Is that not your question? Why they have a large number? They probably have a lot of people living on reserve.

Mr Leadston: Could you provide me with the names similar to what has been provided in this document? For example, Couchiching, and then it gives the reserve, Couchiching IR number 16A and the yearly allocation of 15,554 cartons. Is that possible?

Mr Stoodley: Let me answer for us, sir. To the committee, we will try to resolve the discrepancies. I think it cannot be done here without our records. But we cannot give certain information that is confidential to us, whether or not that information has been obtained or given by someone else. Of course, we can't answer for the content or accuracy of a document that we didn't prepare.

The Chair: Does that answer your question, Mr eadston?

Mr Leadston: That's fine. Thank you.

The Chair: Mr Tilson, and then we'll go to Mr Cleary. Mr Tilson: I'd like to just refer to Ms Jamieson's

remarks, specifically on page 2, and various comments in this document, which I trust you've had an opportunity to look at or you've heard what she said. She has responded to the position of the ministry. The ministry has taken a position as to why it is taking a certain action and Ms Jamieson has in turn responded to that. I'd like to read a paragraph from page 2 and ask for your comments as to

what she's saying.

"The ministry" — referring to Ms Jamieson's written remarks — "has acknowledged that Mr H's proposal would generally not involve collecting tax revenue. However, it has suggested that there is a potential for tax liability to arise as a result of theft, fire or inventory accounting problems." Ms Jamieson then says, "In my view the circumstances of Mr H's case do not involve the type of significant risk underlying the ministry's general bond requirements. In addition, it would be possible for the ministry to place conditions on the permits it issues to Mr H to reduce the risk of potential loss from these contingencies." She also makes some comments in the next paragraph.

Have you got any comments on her response to what the ministry's position is on these things?

Mr Lawrie: Yes, I certainly agree with the Ombudsman that it would be possible for us to place conditions on the permits. In fact, with the four additional first nations applicants for dealer permits that we've had since Mr H originally expressed an interest, we have given them a list of the conditions that would apply.

Mr Tilson: Given Mr H —

Mr Lawrie: No, all of the other four applicants. Mr H's interest never got to conditions. Because we did say there would be conditions on the permit, it never got really beyond the security issue. He didn't actually formally apply for permits. I would point out that although it's true we could place those conditions, and indeed with applicants for a permit for selling unmarked cigarettes whether first nations or not there will be conditions on those permits in addition to the security, without the security there is no enforcement of those conditions. The security itself is the enforcement. The putative dealer knows that if he doesn't maintain the conditions applied to the permit, the ministry will assess the tax on significant quantities of unaccounted-for, unmarked product against that dealer and will immediately collect from the security held. If there is no security held, there is no sanction, and I guess my submission is, very little adherence to the conditions on the permit as a result.

Mr Tilson: I have just one final question. Unfortunately, I arrived late and I wasn't able to ask Ms Jamieson what she anticipated those conditions would be. But you're saying that it doesn't really matter, that without some form of security, you, the government, would have absolutely no control. That's essentially what you're saying.

Mr Lawrie: That's right. In essence, that's the basic principle of tax administration in the self-assessment system.

Mr Tilson: Thank you, sir.

Mr John C. Cleary (Cornwall): My question has partially been answered, but you mentioned there were 16 wholesale dealers on reserves.

**Mr Lawrie:** Currently there are no dealers in unmarked cigarettes — wholesalers, if you want to call them that — located on reserves. There are none. There are 16 such dealers located off reserve who supply unmarked product to reserves.

**Mr Cleary:** Do any of the other dealers find themselves in the same position as Mr H?

**Mr Lawrie:** Yes, since 1992 three new dealers have put up security in order to be able to sell unmarked product.

**Mr Ouellette:** What are the implications of any decisions on this, as they relate to Inuit or Metis as well?

Mr Lawrie: Sorry, I didn't catch that.

**Mr Ouellette:** The implications for a decision on this as it relates to Inuit and the Metis as well. Have you looked at those?

Mr Lawrie: No, because I don't think there are any reserves in Ontario for Inuit and for Metis. Its applied to first nations reserves. Basically the allocation system which controls unmarked product sold on reserves is only applied where there has been a history of abuse of the exemption. That's why it only applies to 30-odd reserves, about one quarter of the 117 in Ontario. The rest have no restrictions at all, although we do monitor sales to those reserves to make sure a problem doesn't spring up.

1120

Mr Wettlaufer One of the biggest problems we have with businesses establishing today is failure to obtain capital. Would you agree with that?

Mr Lawrie: I think that's an obstacle for most small businesses, yes.

Mr Wettlaufer: We have in my riding in Kitchener a young lady who recently wanted to set up a retail operation selling clothes. She had a business plan, which I had a chance to review, and I thought it was an excellent business plan. But of course she could not obtain the necessary financing because she didn't have anything to start with. We have this all through society today. We have it in Ontario; we have it in every other province.

I suspect that if we were not dealing with a native Canadian we wouldn't be here today, because this situation is a little bit unique, but nevertheless it all boils down to his failure to obtain capital. Is that correct?

Mr Lawrie: Yes, I would agree that probably there wouldn't be this ceiling today if that wasn't the case.

I don't regard this particular problem of security being an issue particularly of first nations people. In all tax statutes, the areas that are most likely to be abused through tax avoidance and tax evasion are exemptions and reduced rates. It's simply because there's this exemption in the Tobacco Tax Act that the risk of loss is so high surrounding it. I don't believe it's an offence under the act to purchase, no.

The Chair: So I could personally go in and buy them if I smoked.

Mr Lawrie: There is an offence provided for possession of significant quantities of unmarked cigarettes without an entitlement thereto. I think it's beyond five cartons, if my memory serves me right.

The Chair: I'm understanding you to say that if they had sort of surplus amounts they could set up a little store, I could go in there and buy them. I couldn't resell them, though.

Mr Lawrie: No, that's true. The sanctions are against the sellers and hence the offence of being found in possession of quantities which would lead the average person to think you intended to sell them, not use them yourself.

The Chair: That's right, that you're into some kind of business.

The other one I had was also raised by a question asked by Mr Ouellette — or Mr Wettlaufer perhaps. Could the band itself, or does the Indian Act prevent them from posting a bond or securing the — for example, in the state of some of the casinos that are operated by first nations. I suspect there's some kind of security arrangements. Are the bands able to underwrite or secure the bond?

**Mr Stoodley:** No, not with respect to property on the reserve. The act applies to —

The Chair: What if they own something off the reserve?

**Mr Stoodley:** That's different for both band and first nations individuals.

The Chair: If there are other questions that have arisen out of the discussion on both parts —

Mr Stoodley: Excuse me, Mr Chairman —

The Chair: Oh, you would like to make yours, pardon me.

Mr Stoodley: I did want to say a couple of words to the committee.

It's always with some reluctance that we find ourselves unable to agree with the Ombudsman, but from the ministry's point of view I only wanted to say to the committee that we, the ministry, simply don't agree that our policy is improperly discriminatory. The Ombudsman finds systemic discrimination, finds a result that discriminates against a first nations person, and then concludes that the ministry is improperly discriminatory as a result of what she has found.

Our position, as the Ombudsman has indicated, is simply that we, for reasons of tax administration, which Mr Lawrie has explained, believe that a consistent and equal requirement for security from all people who want to handle the wholesaling of cigarettes is (a) the most economical and practical way to administer the tobacco tax system and (b) the best way to protect the revenues for all of the people of Ontario from erosion. Although this case only involves the Tobacco Tax Act, there are other significant provincial taxes, commodity taxes such as gasoline and fuel, that are similarly administered and where there are similar security requirements.

Believing that the need for security is one of our principal tools of administration, we simply can't agree with the Ombudsman. There isn't a large legal debate that we could have here, thank God. It comes down basically I think, members of the committee, to an area in which we in the ministry, on the basis of tax experience and administration, say we can't agree with you that we are improperly discriminating. We think the issue arises because of a provision in the federal Indian Act, a provision that has both advantages and disadvantages for first nations people. It is a provision that first nations people can, in some circumstances, if they can amass off-reserve property, avoid if they wish to go into business.

But we do believe that the level playing field and the marketplace require that equal treatment, and that if there is discrimination — and clearly I think there is a sort of discrimination in the Indian Act in the special status that it gives to reserve property — if that discrimination exists, we did not cause it and the result is not our direct doing or intention. If those things are so, then we cannot accept the Ombudsman's conclusion that our actions in maintaining a consistent policy for a minimum security from all Ontario wholesalers is improperly discriminatory.

That's all I ask the committee to recognize. I think there can't be more said than the Ombudsman's belief that the result is systemic discrimination and, because we perpetuate the result, we're improperly discriminatory. The ministry's view is that our policy is not based or intended to discriminate against anyone; that the discrimination that does arise is as a result of a federal statute over which we have no control. We therefore do not feel responsible. Members of the committee, thank you.

The Chair: Thank you very much for your presentation. At this point, if there are no further questions of this presenter, we will ask if the Ombudsman's office would like to sum up in any way.

#### 1130

Ms Jamieson: I've noted just a few points that I think need to be responded to. But before I do that, there are two procedural issues that I think I need to raise.

One is a question. You'll recall that when we dealt with Ms C, we had a situation where the representatives from the ministry involved then introduced new evidence during the presentation of the case. At that time, the committee adjourned because the evidence that was presented was not provided to myself or my office before the committee hearing. It's been a pretty long-standing rule at committee that that be the understanding.

I would urge the committee to make that known to ministries that are appearing, because once again today that is precisely what has happened. The evidence I'm referring to had not only to do with the statistics that were presented, but the additional applications that were received and so on. That information was not shared with my office in advance. That, I think, is a pretty serious oversight on the part of the ministry and I want to raise that for the committee's attention.

The Chair: I would ask the clerk to clarify that we have complete understanding of what you're implying here. The committee will consider that and make some recommendations across all ministries.

Ms Jamieson: Thank you. I would ask for three minutes in camera with committee to talk about the second procedural issue at the conclusion of today, if we could. It's an important issue, but I'd like to discuss it with committee in camera, if I may.

Now, as to the issues that were raised that I think do need some response, the first one is that if there are additional applications of which I am not aware, the fact that the ministry has said we have additional people who have not complained who fit this same characteristic does not mean that Mr H's situation does not have merit and that there is not an unfairness here. Whether you have three people, one person, whomever, the fact that they've got four or five people who are silent about it may speak more to the courage of the one than the fairness of the situation. So I think that's an important point to make.

The other point that the ministry has made is that without the security of a bond, they would have no recourse. I think there are a number of things that the ministry can consider for them to have recourse.

First of all, throughout public administration, conditional permits are given all the time. Permits can be cancelled, permits can be revoked. Permits can be revoked in pretty short order. One of the things that could be done in this circumstance, if a permit were granted without a bond or with a very minimal bond, is to have increased reporting responsibilities — monthly reports — to have insurance provisions for fire, which they apparently are

concerned about and is one of the reasons they're worried that without the security bond they may suffer losses.

So there are things that can be done. If the worry is that there be a multimillion dollar loss, then make reporting tight, revoke the permit if it's offended, and if something more egregious occurs, there are the enforcement provisions that are widely available.

The other concern that was raised is that there may be a proliferation of wholesalers if we do this. This was raised, I will say, in meetings that I had with ministry officials. If people are eligible for permits, then they ought to obtain permits. If the denial of Mr H's permits and others similarly situated is about being worried that there'll be too many people in the marketplace, I certainly have difficulty with that. It is not the task of the Ministry of Finance to determine when the market is saturated and when it is not and to protect the businesses of some entrepreneurs over others who may be eligible.

The last and probably the most important issue that the committee is discussing today has to do with the situation that Mr H is in. Here we have a public administration that is trying desperately to treat people fairly, equitably and, as they understand it, equally. The problem is Mr H isn't the same as the Mr or Ms A, B, C located off reserve. To say that he must be treated the same as them, he will just not make it. He is different, and it's that difference that is in front of the committee. How do we recognize that people in our society are different, and still be fair?

That is the essence of treating people equitably: to recognize that some of us have certain abilities, some of us do not. Some of us are located in rural areas, some of us are in urban areas. Some of us are different in our approach, in our legal status, and those differences need to be taken into account. That's why discretion exists broadly in public service and elsewhere: to take into account the differences.

Well, here's a difference that really does need to be taken into account. To say that it's a federal problem — "That's the Indian Act over there; we didn't cause it, therefore we're somehow to be absolved of responsibility for taking note that it exists and discharging our responsibility so that we level the playing field," I think is not a reasonable approach to take.

The final thing that has been said is that there is a concern about the allegations of discrimination that would occur from those located off reserve. To grant such a permit to a person like Mr H would give unfair advantage to Mr H, as opposed to giving finally fair treatment to Mr H. If one goes along this path, I'm afraid where you end up is concluding that it is therefore better to discriminate against the Mr H's of the world than to face the complaints that would arise from those off reserve who would not see readily the unfair circumstance that Mr H is in at the moment.

I think fundamentally what the ministry is obliged to do is to provide access to those schema, those responsibilities it discharges, to level the playing field and still at the same time to fulfil their responsibilities towards all of us who are the taxpayers of the province. I think there is ample room for the ministry to do both in this situation. There is ample room to do it under the current legislation. I would urge the committee once again to support the recommendation that I have made that Mr H's case be reconsidered by the ministry officials. That's all that I have to say.

The Chair: Very good. If there are no further questions, there have been a couple of requests, certainly one request made by the Ombudsman that I would ask the committee to consider. If I may, with the indulgence of the committee — I suspect I can have another question, or ask the committee if they have any other questions of the ministry people out of this full range.

Mr Tilson: I appreciate your response to the issue that I was raising and that had to do with your response to the issue of whether or not there was a tax liability. Your comment was you can put conditions, and your answer that you could revoke the license was good. That was a good response.

The one area that I still have is, and I call it reverse discrimination, that you do something to someone on a reserve but you don't do the same thing to a person off the reserve. It could be conditions, it could be reducing, it could be eliminating. Hence we get into a debate as to what is systemic discrimination. I suppose that's where we end up. We end up in that debate.

I'm just telling you that in my view, as a politician at least, I believe there'll be a whole pile of people out there who would call that reverse discrimination. I don't know whether you have a response to that, but that's my assessment as a politician representing a constituency in this province.

Ms Jamieson: I guess the current situation, Mr Tilson, the way you put it, is that I would be asking H, somebody on reserve, to be treated differently than somebody off. The reality is that we are treating Mr H differently than we are treating others, because he can never qualify, he can never be eligible for the permit.

#### 1140

Mr Tilson: I can tell you of people in my own riding who will never be eligible for that permit. I can name people. I'm not going to in this public forum, but I can tell you that there are people in my own riding who will never, ever be eligible, who have the same economic standing, the same education.

Ms Jamieson: No, no. Let me be clear. I am not arguing that H is not in an economic situation. This is not about impoverished people applying for permits. This is not about impoverished people.

Mr Tilson: No, I understand.

Ms Jamieson: This is about someone who, because his assets are located in a first nations community, cannot pledge them. I don't want to make that case because that's not the case I'm making.

Mr Tilson: I understand that ultimately it will end up as to, what is systemic discrimination? I believe that you and I, if we pursued this, would ultimately end up in that debate. I can only tell you what I perceive people in my

riding — and I don't know how other members of the committee feel, but I know people would say to me, as a politician, "That's reverse discrimination, no matter what you say."

Ms Jamieson: I appreciate that that view is out there and I appreciate how difficult it is to meet that view in a way that helps people to understand that we're different as people, one among the other, to understand how society has to be willing to bend and shape and accommodate so that people are treated fairly because we are not identical. Thank heaven we're not identical.

Mr Tilson: I agree.

Ms Jamieson: If we all came out of cookie cutters, life would be easy. But it isn't, and it's a tough issue and a tough sell.

The Chair: We'd invent some problems.

Ms Jamieson: But this case is classic systemic discrimination and ought to be dealt with that way.

The Chair: The final question, I guess, is Mr Marchese.

Mr Marchese: You comment on it, but I think it's important to repeat, three areas quickly. Mr Stoodley says, "If discrimination exists, we did not cause it." They have no direct relationship to it or intent to discriminate. Obviously that's true. They didn't cause it and they're not directly involved in discrimination, nor is the intent the case.

But I certainly get the feeling from the arguments that have been made that this is an issue where discrimination is the consequence of an individual who, by virtue of living on the reserve, is not able to use whatever capital he's got to be able to make the pledge to have the bond, and that's the difficulty. In this case, you're arguing, as I am I guess, that the province can fix that problem if it wants to, as opposed to saying, "The problem is section 89, we can't fix it." We're saying, and you're arguing, that you can by controlling it.

Ms Jamieson: Yes.

**Mr Marchese:** You recognize that there's an unequal problem and in recognizing that, this is how we can control it through these enforcement mechanisms.

The problem of reverse discrimination links directly to employment equity, which this government has dealt with, I say, unfairly. It's probably true that Mr Tilson says in his communities they're going to say it's reverse discrimination. But it seems to me we have an obligation to understand whether or not this fellow Mr H in this case is being unfairly treated, and if you don't make that argument, your people are going to say, "Yes, of course, it's reverse discrimination." But if we help to make the argument and to show that there is unequal treatment to begin with because there is an unequal condition, then we're going to deal with it fairly for those people and for those who are likely to say this is reverse discrimination.

I hope the members will consider that this Mr H is facing a difficulty and that we as a province can fix it if we want, and we fix it by having the proper controls that the Ombudsman was speaking to. I think that would deal with it in fair way.

The Chair: I'd just ask the Ombudsman, could it be established in the frame here that if it was established that it was discriminatory to request the \$500,000 bond to sell unmarked cigarettes, the same case could be made that there should be the ability to sell off reserve because people who have not been discriminated are allowed to sell on reserve? Would this be the first step, in your view, to establishing a full dealership?

Ms Jamieson: I didn't look at that.

**The Chair:** That's where I would go with this. I'm not sure if you're going there. Is this the first step —

**Ms Jamieson:** I'm not going there and that's not what this applicant asked to do.

The Chair: Okay. It's strictly that the applicant was to — unmarked.

Ms Jamieson: On reserve.

The Chair: Okay. We have one other question. I would ask the committee to consider the question for a three-minute in-camera request. My other comment is that

I personally believe, since we've had a full discussion on this case, that we give it consideration before we adjourn. So it's at your leisure.

**Mr Marchese:** That's agreed, Mr Chair. I think it's a matter of seriousness probably.

The Chair: Yes, it is very important. Those in favour of granting a three-minute in-camera session with the Ombudsperson, all those in support? That's carried unanimously. We will now convene in camera.

The committee continued in closed session from 1147 to 1158.

The Chair: The committee is reconvened. The committee has considered the case of the Ombudsman and the case of Mr H versus the Ministry of Finance and has decided to oppose the Ombudsman's position. That will be the recommendation of this committee. That being the decision, this committee is adjourned.

The committee adjourned at 1158.

#### **CONTENTS**

#### Wednesday 17 September 1997

Case of Mr H	B-177
Ms Roberta Jamieson, Ombudsman	
Ministry of Finance	
Mr Graham Stoodley, director, legal services branch	
Mr Roy Lawrie, assistant deputy minister, tax division	

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Wednesday 1 October 1997

Journal des débats (Hansard)

Mercredi 1<sup>er</sup> octobre 1997

Standing committee on the Ombudsman

Case of Mr S

Comité permanent de l'ombudsman

L'affaire M. S

Chair: John O'Toole Clerk: Tonia Grannum Président : John O'Toole Greffière : Tonia Grannum

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 1 October 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 1<sup>er</sup> octobre 1997

The committee met at 1006 in room 151.

#### CASE OF MR S

Consideration of the Ombudsman's case report in the matter of Mr S and the Ministry of Health.

The Chair (Mr John O'Toole): Let's call the meeting of the Ombudsman's committee to order. We have before us the agenda, which is dealing with a case in the matter of Mr S and the Ministry of Health. I would hope that every member has a copy of the report. This is the Ombudsman's report on that. Does everybody have that document? We're pleased to be joined by the Ombudsman this morning. Good morning, Roberta.

Ms Roberta Jamieson: Good morning. Before I begin, let me say bonjour, sago in my language, and welcome to the new members of the committee. I know there has been a change in committee makeup and I see some new faces, though not to me, certainly to the committee and I look forward to working with all of you.

I am very pleased this morning to have the opportunity to present the findings that I've made following an investigation into a complaint concerning the assistive devices program. It's commonly called the ADP, and that's the term I'll be using, and it's administered by the Ministry of Health. For this presentation, as with the case report that I made available to the Legislature, there is a practice of anonymizing the individuals involved and that continues.

As you know, tabling a case report with the Legislature is the last step open to the Ombudsman in the procedures set out in the Ombudsman Act. At this stage, I will have raised the issues and discussed the case with the head of the governmental organization. I will have advised the minister responsible. I will have notified the Premier of my conclusion and recommendations. At this stage, I am coming to this committee, through tabling a report in the Legislature, to seek your scrutiny on the case, to seek your intervention and support of my recommendation so that the ministry will itself feel obliged to put this matter of unfairness right. So this is the final step.

I want to turn to the case of Mr S and the Ministry of Health's assistive devices program, the specifics of it. This program provides funding to assist in the purchase of certain high-technology aids required by persons with disabilities. In the case of high-tech visual aids, an assessment is required by an ADP-approved assessment centre to determine which devices may be most suitable to

meet an individual's needs. At the time of his complaint, the nearest of these centres to Mr S's Ottawa residence was in Toronto. S complained to my office that in denying him financial assistance to cover the cost of travel to Toronto, the ministry was effectively denying him access to the program. In the absence of an assessment by the ADP-approved centre, he was then not eligible to receive program funding for a high-tech vision enhancement device.

The situation of S is a classic case of catch-22. He was seeking financial assistance to purchase the device he needed through the ADP but could not get this assistance because the program would not assist him with the travel funds to complete the eligibility requirement. His predicament — he is not alone — is representative of other people with disabilities who, because of their geographic location or lack of financial resources, are effectively denied access to a program that is supposed to be equally available to all eligible applicants in Ontario. This is not the first instance where this type of case has been brought to committee, where a program or policy which appears to be fair and neutral in fact in practice has a negative impact on a group of people who share certain characteristics or circumstances.

The number of potential applicants to the ADP who are financially disadvantaged is disproportionately high, and that's as a result of the regrettable statistical fact that Ontario residents with disabilities have an average income which is 28% less than that of Ontarians without disabilities. It's also true that travel is often a more difficult undertaking in general for a person with a disability. Consequently, financial considerations and geographic location are particularly acute concerns for those individuals whom the ADP was designed to benefit.

Successive governments in Ontario have long promoted the importance of accessibility for basic health care services to all Ontarians. My principal concern in this case is that the financial assistance that ADP provides for devices which are essential to individuals with disabilities is not universally available if any of those individuals are prevented, because of their economic or geographic location, from obtaining that financial assistance.

The discriminatory effect I have described here is not intentional in the design of the program. Indeed, this ministry recognizes that disparities exist as a result of remote geographic location and compensates for this, at least in part, through its administration of the northern health

travel grant, which helps residents of northern Ontario travel to designated health care facilities.

The ministry, I acknowledge, has also been working to approve additional ADP assessment centres, which would reduce the distance that some applicants would have to travel to determine eligibility. As more centres are approved, this will reduce the extra costs for some applicants, but it will not adequately address the situation of S and others like him. There would have to be an extremely large number of approved assessment centres before all the province's residents are brought within a reasonable proximity to one. That is why I formulated a recommendation to provide financial assistance for travel needs as an accommodation for those individuals who otherwise would not have access to the program.

At one stage of the investigation process in this case, the Deputy Minister of Health observed that if applicants' travel costs were to be reimbursed or subsidized, it would substantially increase the cost of administering the program and therefore reduce the funds available for the assistive devices themselves. While the ministry did not indicate any estimates of such costs, this position goes to the crux of the problem: the cost implication of addressing the inequity that exists. In my discussion of this issue in the case report, I've raised two options for the ministry to consider that would enable it to implement my recommendation.

First, the ministry could provide additional funding for the operation of the assistive devices program; in other words, increase the envelope. This, of course, would be my preference, as my findings in the case of S are critical of the inequitable access to the ADP and not of the program itself. Any solution to the access problem that would be detrimental to the overall program would not be a positive outcome. Additional funding to cover the necessary travel needs of applicants would provide true universality of access rather than access for only those who can afford to travel.

Second, I have acknowledged that the introduction of a sliding scale for reimbursement based on a means test would ameliorate the financial aspect of the access problem; in other words, the same envelope, different rules within it. Individuals who receive funding through the program already incur a copayment charge on the devices and the assessment fee. Such costs alone may represent a prohibitive financial barrier, apart from any travel costs. A sliding scale for reimbursement would mean that those with no capacity to pay any travel or device-related costs would be fully subsidized, while those who have sufficient resources to contribute to the cost of travel and acquiring devices are assessed on the basis of their ability to pay. Right now, if you earn \$200,000 or \$5,000, the rules are the same.

To summarize, I believe it is neither fair nor reasonable to expect those applicants who are economically disadvantaged — and many people with disabilities are — to incur travel expenses, while those who are fortunate enough to live near an approved centre have no such burden. Ignoring the diversity of circumstances in our popu-

lation and treating everyone the same, regardless of obvious and significant difference, does nothing to promote fairness in the delivery of government programs. Accordingly, the Ministry of Health should take steps to remove the discriminatory effect of its policy in the administration of this program.

I therefore urge you to support my recommendation that the Ministry of Health should ensure that appropriate financial assistance is available to applicants of the assistive devices program to offset the cost of their travel to and from program-approved assessment centres where such assessments are necessary for the purpose of determining their eligibility under the program for high-technology visual aids.

I'd be very pleased to answer any questions that members may have.

The Chair: Thank you very much. At that point, I'll open up to members of the committee, if there are any questions. Mr Gerretsen, did you have a question?

Mr John Gerretsen (Kingston and The Islands): Yes. I assume we'll be hearing from the ministry later on.

The Chair: Yes.

**Mr Gerretsen:** Do I understand that currently there are three other centres that have been opened up to do these kinds of assessments?

Ms Jamieson: Additional centres have been opened up, yes, Mr Gerretsen.

Mr Gerretsen: It includes the one in Ottawa where Mr S is from, but that was not the case at the time this matter came before you?

Ms Jamieson: That's correct.

Mr Gerretsen: Okay.

Ms Jamieson: This case, the reason I continued with it is that S is not alone. He is representative of a much larger group of people who may be still too far away from the centres in their current locations. I applaud the opening of additional centres. It doesn't help those people who are still located far away and it certainly doesn't help those people who can't afford to get there.

Mr Gerretsen: The people in northern Ontario already have a special grant available to them in order to access one of the centres.

Ms Jamieson: In the far north, there is something called the northern health travel grant program.

**Mr Gerretsen:** Did you review at all the government document that is put out by the ministry about the assistive devices program? On page 3 it says:

"What happens next?

"Usually, your doctor will refer you to an 'authorizer.' This is a health care professional registered with ADP."

To my way of thinking, and just a plain reading of it, it doesn't seem to indicate that these people can only be found in effect in four centres in Ontario. It almost makes it sound as if they're available much more readily—

Ms Jamieson: Kind of everywhere.

Mr Gerretsen: — than is the case.

Ms Jamieson: I believe we have examined most of the material available publicly on the program. I don't have in front of me the document you're reading from, but my

understanding is that when people are assessed by their doctor and they're sent to someone for an assessment — it may be their optometrist; they may have started there — they end up having to pay to get themselves to the assessment centre, and then there is an assessment fee, but that is partially subsidized, as is the equipment. The only piece of the process for which there is no financial assistance available is getting there in the first place.

#### 1020

Mr Gerretsen: Just one final question, and I'm just trying to get the sequence of events here. I'm new on the committee and I'm not quite familiar with the processes. You indicated, and in the material that you filed as well, that you wrote a letter to the Premier some time near the end of May. Do I take it that in the past something would have been negotiated through the ministry as a result of letters you would write to the various ministries involved, but in this particular case you didn't get any response at all and that's why you went public with the information?

Ms Jamieson: Just to briefly recap the process that the member asks about, by far the vast majority of complaints that come to my office are resolved. Many are resolved early without an investigation. Quite a number are resolved through the process of an investigation. Some I go to the end and do a report that I put in front of the ministry saying: "Here's what I found wrong. Here's what I recommend to fix it." Hopefully they listen. If they do not, I will finalize that report. That report goes to the minister. There's an opportunity then for the minister to solve the problem, and this has happened in the past. Then I'm obliged to notify the Premier. It has also happened in the past where a Premier has stepped in and solved the problem. Then, if all that fails and I still feel the case is one that ought to be brought to the public's attention, I will table a special report in the Legislature. Then it comes before this committee, and I have an opportunity to present and the ministry to explain why it won't follow the recommendations, and hopefully the committee to have its say on the findings.

**Mr Gerretsen:** This is only the eighth case where this has happened during your tenure, since 1989, according to the media reports.

Ms Jamieson: I think it's the ninth, in fact, since I've been the Ombudsman. I actually tabled around five in 1993. Two of those were solved a few days after I tabled them. The others went to hearings. Then there was a gap. In the last 12 months, I've had four that I've brought in this way.

Mr Dominic Agostino (Hamilton East): I guess the fact that there is a program to assist residents in certain parts of northern Ontario would acknowledge the program restrictions within the fact that those centres are not readily available, and would mean that there is already a basis there to discriminate against people based on where they live. That has been acknowledged by the fact that the program says we will help people from northern Ontario, as an example, access centres and pay for travel to access centres. I think that principle has been established that the

program itself is discriminatory based on travel and ability to get there through friends or relatives and so on.

Do you agree with that understanding of it, that in a sense acknowledgement has been made already and it's just a question of which locations get approved for travel reimbursements, not necessarily that the principle on its own already is there by the northern Ontario grant?

Ms Jamieson: The ministry has acknowledged in the past the difficulty of people in the north to access services and there is a northern health travel grant provided, so there's an acknowledgement there that assistance is required to get there. They have also opened up additional assessment centres, and so they have acknowledged that there's a problem.

I'm saying that despite those two things, they still have not addressed the situation that many people will find themselves in. If you're in Windsor, you still have to travel, even in the south, quite a distance to be assessed. If you're in Parry Sound, if you're in — Ottawa is okay now but there are many other parts of Ontario where you will. We all know how big Ontario is and what it costs to move around and so to get there is a significant expense.

Some people, I fear, aren't even going to try. They don't have the wherewithal to even attempt it, to ask relatives. Should we be putting people in this position when we say the service is universally available? I don't think so. People have talked about means testing. There's a means test if I ever heard it. If you don't have the means, you don't get the test, in this case.

Mr Agostino: Just briefly on this. The way the program is now structured, if you lived in Windsor, as an example, and you needed the assessment, you may qualify fully for the assessment. Obviously there is a financial means test that is applied for eligibility for ADP. Generally, the income level of a person living in Toronto who is eligible for assistance for the ADP and the income level of a person living in Windsor would be relatively the same?

Ms Jamieson: They don't take into account, as I understand it, income level. This assistance is a benefit that you get if you are approved at an assessment centre, whether you earn a quarter of a million dollars a year or \$20. That's not taken into account. The differential is the means with which I get myself to the centre. If you're in Owen Sound, if you're in Windsor, other parts of Ontario — we can all kind of visually see a map — you still have to get yourself to the centre.

Mr Agostino: The ministry is suggesting you use family or relatives or friends, and if you don't have them, have they suggested an alternative? If there are no friends or family or support systems around you to get you there, is there any other alternative for an individual to get to this assessment centre?

Ms Jamieson: That's certainly a good question to put to the ministry. I feel myself that to ask people who are poor to access friends to get there for a benefit that they are to be entitled to is discriminatory when you don't ask that of people who have the means to get there. That's not a universally available or a universally accessible program or benefit.

The Chair: I have a number of questioners. I'm going to continue in the sequence I've recognized them. The next one is Mr Pettit, then Mr Preston and then Mr Wood.

Mr Trevor Pettit (Hamilton Mountain): Ms Jamieson, during your investigation, did you determine what, if any, travel costs are covered for this type of program in other provinces?

Ms Jamieson: I didn't investigate this matter in other provinces but I can tell you that the ministry certainly let me know they feel Ontario is not alone.

Mr Pettit: Would you care to elaborate on what you mean by "not alone"?

Ms Jamieson: They feel Ontario is the leader in having the assistance that we do have for this type of program.

**Mr Pettit:** Since the Mr S case, have you had any other complaints regarding the question of travel to ADP assessment centres?

Ms Jamieson: I'm not sure if I can give you numbers, but I wouldn't require another case to put this forward, because by virtue of the very nature of the circumstances here, there are probably many people out there who can't get to the centre and who wouldn't have the wherewithal or wouldn't be brave enough to speak out and complain. S was, and that's why I picked this case up and looked at it, because S is representative of a group of people.

There is an injustice here, and even if it were only S, I would say there is an injustice here. But there are more Ss behind him. There are more people in this circumstance, and that's why I brought the case forward, because it's fundamentally unfair. Numbers to me are not persuasive or particularly relevant when I find an unfairness in the system.

Mr Peter L. Preston (Brant-Haldimand): I understand you have no problem with the ADP itself; it's the distance travelled. Please, don't anybody think I'm trying to equate a disability with any lesser thing and saying that they're equal. I'm not.

The point I'm going to try and make is that in Ontario distance discriminates against many more people than the disabled. The person who wants to make his views known to this committee or any other committee, who happens to live in Kakabeka Falls, or anywhere else in Ontario, is discriminated against because of travel. The person who wants to reach a site that has jobs is discriminated against because of travel.

#### 1030

I would think most provinces in Ontario, and most areas where there are large, we'll call them rural areas that extend to the far north, are going to have the same kind of problem.

The matter of travel costs should be reviewed right across the board, and again I'm not lessening the disabled person that can't get here. I'm saying travel costs for a number of different factors, because distance in this province discriminates. If you happen to be close to what you want, you're laughing. If you happen to live in our pristine north — near north, not far north, because there are arrangements made for some of those things — in our near

north, you fall into the slot between the ones that are a long way away and the ones that are close. I think distance, being the discriminatory thing that it is, travel costs across the board should probably be looked at — not necessarily granted but looked at.

The Chair: Very good.

Mr Len Wood (Cochrane North): Being from the north, if this person was living in Hearst or Long Lac or some area rather than Ottawa, where people are being partially subsidized — they're not fully subsidized for travelling to medical centres or to doctors or to specialists — is your feeling there would have been some aid available?

**Ms Jamieson:** Yes, it's my understanding there would be some aid available to them to get there.

Mr Len Wood: In the case of Mr S, was there any attempt by the agency that was going to evaluate him to see if he was available for this device, was there any attempt made to them to offer to go to Ottawa to assess him rather than having him travel?

Ms Jamieson: As I understand it, the ministry has looked at providing in-home assessments, or travelling assessment centres to accommodate this problem, but it was not seen to be a practical or reasonable thing to do because you can't get all the specialized equipment to move around that easily. There has been some consideration to accommodate that, but it's not easy to do. That's why the requirement to come to the assessment centre continues, and they've tried to compensate in part by opening other centres.

Mr Len Wood: So there is a centre open in Ottawa now, and one in Toronto?

Ms Jamieson: There is now.

Mr Len Wood: The other two centres, where would they be, do you know?

Ms Jamieson: I'm sure they'll be able to speak to this as well. If I'm not mistaken, they are also in Sudbury and Hamilton, so we've got Hamilton, Sudbury, Toronto, Ottawa, and do we have Waterloo? And Waterloo.

Mr Len Wood: And Waterloo, okay.

Interjection.

Ms Jamieson: And Brantford, of course.

Mr Len Wood: Thank you. In most of these cases, they're brought to the Ministry of Health. In this case, a further step was taken and it was brought to Premier Mike Harris's attention. There was lots of media coverage on the case. Was there any attempt to mediate or negotiate a solution? I guess not, because we're here today. You're at the last step, and the Premier went golfing instead of sitting down to care whether this person gets the devices or attempt for travel or whatever. That's the same thing as when he walked away from the teachers and went golfing. He walked away from the Days of Action in North Bay and went fishing.

Mr Gerretsen: In Iowa.

Mr Len Wood: In Iowa. You're saying in years gone by, when it was brought to the attention of the different ministries, that mediation or some attempt was made to resolve the situation so the discrimination, or the seeming discrimination, was eliminated. In this particular case, nothing was done?

Ms Jamieson: In this case, that's why I'm here, because we have not found a solution. I put forward two options to solve it. One is you make the envelope bigger for the program, because nobody wants to say that people with disabilities should be turned away because they're increasing the availability of travel assistance for some. So increase the envelope, provide people with disabilities who can't afford to, as well as who are far away from — and they're two different things — to get there for the assessment. Increase that envelope so that they get assistance for the device, assistance for the assessment fee, and assistance for getting there.

The other option was, okay, if you cannot increase the envelope, look again at the envelope and look at a sliding scale for those who should be granted assistance. Maybe some people should only be getting 10% assistance as opposed to 75%. Maybe others should be getting a larger percentage or completely subsidized if you really can't afford it. I explored options to try and come up with a solution to this that would be fair and equitable and address the problem that S raises. Neither of those were seen to be acceptable and nothing else was seen to be acceptable, with the exception of opening more centres, and I must say I applaud that but that has not fixed the problem.

Mr Len Wood: The northern travel grant over the years has run into some difficulties because of financial constraints. I remember when we were in government the expenditure controls and social contract and one thing or another, and changes were made to it so that, for example, instead of having people travel all the way from Kapuskasing, for example, to Toronto or to Ottawa on every occasion, any further follow-up would be done through the closest specialist, whether it be Sudbury, Timmins or whatever. The follow-up subsidy to that person would be to those areas. It was an attempt to cover more people and yet live within the budget that the Minister of Finance struck at that point in time. Would this be an acceptable solution right across Ontario for the ADP plan, so that people in Windsor, people in Sarnia or people in any other area who are considered to be partially disabled would be able to tap into that fund?

**Ms Jamieson:** If travel assistance were made available, would it solve the problem? Is that what the member is asking?

Mr Len Wood: They could put a cap on it and say you're going to get 10% of your costs of travel, or 20% of your costs of travel, or whatever, the same as the northern travel grant is.

Ms Jamieson: Particularly in the case where government is saying that ADP is available to all residents of Ontario, regardless of income or means, if that is being said, then I think there's an obligation to make it truly accessible, regardless of income or means, and that is not what's happening here.

I have not examined areas beyond this program in this regard which I think the member is asking about, a broader kind of landscape, and I don't feel comfortable

talking about that, but I am saying that in the case where you're saying we have got a program that's universally available, and then to build a barrier into it is really contradictory, and that's what's happened here — not only contradictory, discriminatory against people who are poor, and many people with disabilities are poor or are located a far distance from the centre.

Mr Len Wood: Thank you.

Mr John L. Parker (York East): You said that you haven't investigated other provinces, but the ministry has suggested to you that they feel Ontario's program on ADP matters is more generous than other provinces. Did I understand that correctly?

1040

Ms Jamieson: You might want to ask the ministry about other provinces. I did not investigate other provinces; I investigated only what went on here. I can tell you that the point about this not being a requirement under the Canada Health Act was raised. But that's not the issue for me. The issue here is, we have a program that is said to be universally accessible and available, and it is not. Whether other provinces are more progressive or less progressive is of interest but it wouldn't be compelling in this circumstance.

**Mr Parker:** What does the Canada Health Act require?

Ms Jamieson: If they want to rely on that, I don't think it's persuasive. The Canada Health Act has to do with health services. We're talking about a benefit that people are eligible for once they pass the assessment. So I think it's quite a different matter.

Mr Parker: What is the legislative requirement? Whatever the source, whether it's the Canada Health Act or provincial legislation, what's the legislative requirement?

Ms Jamieson: I have not examined anything to tell me there is a legislative requirement for this, with the exception that if you qualify for assistance under FBA or under the new Bill 142, the assessment fee, that part, will be covered. But there are whole groups of people, as you know, who don't fit that definition.

Mr Parker: When we get into matters of travel allowances, you've mentioned the travel allowance for the north. Is that inherently discriminatory because it's available strictly to people who reside in the north and is not available to others?

Ms Jamieson: No. On the contrary, it is a measure that has been taken to accommodate the fact that people in the north are different — differently located, located farther away — and have hardship in accessing services as a result. It's a measure that was taken to bring people who were not equal to the rest of the province up to a level where they can access services. It was a special measure that was taken, quite rightly, because we're not all the same. We are different in this province. Some of us have greater needs than others.

Government, in developing the northern health travel grant said, "We know it's a hardship for people to travel to access health services, therefore we will make this available." It made the system more equitable. That is the problem here. What needs to be addressed is to make the situation more equitable so that all people will have access to the ADP assistance: those who can't afford it and those who are located far away and need special accommodation.

**Mr Parker:** Does the northern health travel grant inquire into matters of income? What are the criteria for it?

Ms Jamieson: On the specifics of that, you might wish to ask the ministry, or I'm happy to send that to you. I have not come here with the detailed policies and procedures attached to the northern health travel grant. I can only tell you that, as regards this system, the assistance would be taken care of for the ADP centre. I don't believe it measures income, but I could be corrected.

Mr Parker: You say that the northern health travel grant is not discriminatory, but wouldn't it be true that somebody who resides north of the line would benefit from the program and somebody who resides south of the line would not benefit from the program, and the travel costs for someone who resides south of the line might be as great as for someone who resides north of the line?

Ms Jamieson: I think there is that difference, yes, which is why I think that now we've recognized the north and their particular challenges, we need to recognize the poor and people who are geographically distant from the assessment centres if we're truly going to say, "This is universally available."

Mr Parker: Who mandated that it be universally available? Where are the requirements for that? That's getting back to the question I began with.

Ms Jamieson: That's government policy. Government, in correspondence back to me, has in fact said — just a moment, I'll find it — "The ministry's position is that ADP is available to all residents of Ontario regardless of income or means."

Mr Parker: Regardless of income or means.

Ms Jamieson: Right.

**Mr Parker:** If I understand you correctly, that's not a legislative requirement, that's a ministry policy.

Ms Jamieson: Right. That stands open to be quite readily amended as a result. We're not looking for a legislative requirement; I'm looking for the ministry to change its policy, its practice, so that its policy, which is that it's available to everyone, will be carried out in practice; that they will extend the assistance availability to travel as well as to the purchase of the equipment itself.

The Chair: We're nearing the conclusion. We are going to hear from the Ministry of Health, but there are two more questioners, and at that point we'll move to the ministry.

Mr Preston: I just have a short one. This is not about distance, this is about means. Whether 50 miles or 500 miles away, you would object if somebody couldn't get to what they need because of means. Distance really means nothing.

Ms Jamieson: In this case, it was about both. It raises both questions. Actually, I think in the S case, it was more distance than means. In other cases, it's more means than

distance. Or they can be a combination of the two. Would I object if someone couldn't afford to get to an assessment centre in downtown Toronto from Orangeville? Yes. If the ministry says, "It is a program; you are eligible for this benefit if you pass the assessment test and you are eligible therefore, as of right, for a subsidy for the purchase of this equipment," yet it says, "Unless you can get here, you can't get it," I say that is discriminatory. That is not making the assistance available to people generally.

Mr Preston: I have a problem with this word "discrimination." The line that's been drawn between the north side of the grant and the south side of the grant, that line is discriminatory. People make choices —

Interjection.

Mr Preston: Well, it discriminates against the person who lives on the south side of the line. He can't get the same grant as the person who lives on the north side of the line.

**Mr Gerretsen:** Why can't you guys fix that?

Mr Preston: The fact that people live a certain distance from any given thing, whether it's the assistive devices assessment or a Blue Jays baseball game — again, I'm not trying to equate the two. Please, I'm talking about distance.

Mr Gerretsen: There's a difference.

Mr Preston: I know that. I started off at the beginning — please, I'm trying to make a parallel, but not a parallel in the seriousness of the problem — to parallel distances. People choose to live in certain areas. Certain areas have benefits. I feel very badly about a person who lives in the north who can't get to a major centre for their health needs. I also envy them for living in the north. You choose where you live. I believe there should be some way of mediating distance, but I don't like the idea that we're calling distance discriminatory.

Ms Jamieson: Let me be clear: I'm not calling distance discriminatory. I too am troubled by the use of the word "discrimination" as it's being invoked time and again for things like discriminating taste and that society is inherently discriminatory. Let me be clear: What is wrong here is that people with disabilities, who earn less, by our statistics, who have less means than the rest of us in Ontario, are trying to access a program which government says is equally available to everyone. The reality is, it is not equally available to everyone if you cannot afford to get there, as many people with disabilities cannot. Plus, if it's a further distance, it compounds the problem. Then it is inherently discriminatory against those who cannot afford it.

Why am I talking about discrimination here? Because it is the task of government, of ministries that are delivering services to the public to do so in a way that does not provide barriers to the very public they're trying to serve.

In this case, there are barriers. They have taken corrective steps for the north and corrective steps for locating assessment centres closer to people, but they have not taken into account corrective steps for people who can't afford to get there, and that is discriminatory, pure and

simple. It undermines the basic standards that we in this province stand for and in fact publish in our pamphlets and advertise to the very people we're trying to serve. It's that which I focused on. That is clearly a fundamental, self-evident case of discrimination against the most vulnerable. That's what makes it particularly compelling for me.

Mr Agostino: I find some of the comments on the other side to be absolutely bizarre. We talk about distance. You talk about people making choices and then you say, "If you live in Windsor, you have to travel just as far for a Blue Jays game." We're talking specifically here about a program for disabled individuals; we're not talking about choosing to go to a baseball game, for God's sake.

**Mr Preston:** I'm sorry you don't have the capacity to understand what I said right at the beginning.

Mr Agostino: I think I have the floor. I gave him a chance to speak.

I just think, first of all, it's absolutely bizarre to make those kinds of comparisons. The bottom line is this: Someone on a disability pension of \$8,000 or \$10,000 a year who lives in Toronto and someone on a disability pension of \$8,000 or \$10,000 who lives in Windsor should have the same access to assessment, to see if he or she is able to get a wheelchair. I think that is a basic principle that this program has to address. That's really what the Ombudsman is suggesting here today, that access to the assessment should be the same. It doesn't matter where you live in this province, we believe that program should be equal.

If we believe this program should basically discriminate, as it does, against people who live in areas where the centre is not available, and they can't afford to get to that centre, we're going to say: "If you need a wheelchair in Toronto, you can get it because there's a centre right near you. If you need a wheelchair and you're in Windsor, you can't get it because there isn't an assessment centre near you." I think we have a role to try to compensate for that.

This has to be looked at, and you can address it. You talked about it earlier. I think the program itself is flawed in some ways where there is no income limit. I don't necessarily object to the principle of looking at the limit. Frankly, someone who's making \$200,000 a year and needs some assistive device in my view should not be eligible for a government program, as someone should who's making \$5,000 or \$6,000 or \$7,000 a year. This is where you can balance that. If we're talking about containing costs, I would say restructure this program. Someone who makes \$200,000 a year can afford a hearing aid.

I'm not sure why the program, when it was structured, had absolutely no income provision in it. That is one way of redressing the imbalance without adding to the cost of the program, by putting a reasonable limit on eligibility. I think the members across the way would probably agree with that to a great degree, to ensure that the people who really need it have greater access to it.

I am a little surprised by the fact that the program is totally open-ended — maybe the Ministry of Health folks can address this — from the point of view of eligibility. I just don't understand why someone having an income of

\$200,000 a year should be eligible for a program that someone who's making \$7,000 or \$8,000 a year through a pension cannot get because they can't travel to a centre. This is one solution to addressing the issue and giving the full access.

Mr Preston: It's called a means test.

Mr Agostino: It's an eligibility requirement. Many programs have eligibility requirements. Social assistance has eligibility requirements. Many government programs have eligibility requirements. It's a reasonable part of things. We're not suggesting that anybody who's making \$100,000 a year should collect welfare, obviously. There's an income limit there, an eligibility requirement. The same eligibility requirement, to some degree, whatever that level is set at, could be looked at for this program, to offset it and give people who have a real need access to it.

The Chair: We'll hear now from the Ministry of Health. I'd call on Mary Catherine Lindberg. I would ask you to take your place and introduce those people who are going to be making the presentation. I gather you have not provided the committee with any written input.

Ms Mary Catherine Lindberg: No.

The Chair: Will you be providing the committee with your comments in writing?

Ms Lindberg: I've just got notes this morning, but I can give them to you, yes.

My name is Mary Catherine Lindberg. I'm assistant deputy minister of health insurance and related programs at the Ministry of Health. I have with me today Laurel Montrose, from our legal branch; Eileen Mahood, director of the northern health travel grants; and Gordon Kumagai, from the assistive devices program.

We'd like to thank you for inviting the Ministry of Health here today and providing the opportunity to explain the ministry's position on the case of Mr S. As the Ombudsman has indicated, the ministry's position on the case has been, and continues to be, that funds would not be provided to Mr S to travel to a high-technology vision and assessment centre.

The Ministry of Health has one geographically determined program to pay for travel. Since 1985, the ministry has had a northern health travel grant. This program pays a travel grant to those from the north required to travel for specialized services.

It is also a program intended to put more specialists into Ontario's north, to ensure that those in the north have access to northern services. We have, over the past years, escalated our efforts to increase the number of health care specialists located in northern Ontario in order to increase the access to health care services in the north. This two-pronged approach, with heavy emphasis on the second, exemplifies the Ontario government's commitment to increase access to health care.

First, I would like to indicate that the ministry disagrees with the recommendation of the Ombudsman in this case. The Ombudsman has recommended that the Ministry of Health should ensure that appropriate financial assistance is available to applicants to the assistive devices program

to offset the cost of their travel to and from programapproved assessment centres where such assessments are necessary for the purpose of determining their eligibility under the program for high-technology visual aids.

As we have indicated to the Ombudsman in our correspondence and in meetings with her during the investigation of the case, the assistive devices program is funded outside the requirements of the Canada Health Act. It is not a mandated universal program. Ontario is one of the few provinces that provides funding for certain assistive devices. Only two other provinces, Quebec and Saskatchewan, pay for devices for the visually impaired, and one province, British Columbia, pays for augmented communications devices.

Providing funding assistance to people requiring assistive devices gives them increased independence and control over their lives. Assistive devices may allow an individual to avoid costly institutional settings and help them remain in a community. The program provides funding assistance towards the cost of devices and is available to all eligible Ontario residents, regardless of income and means.

To qualify for assistive devices funding, a person must be an Ontario resident with a valid health insurance number issued in their name and have a physical disability lasting six months or longer. People who access the assistive devices program have a wide variation of disabilities.

Assistive devices currently has 127,000 clients. In 1996-97, 14% of these clients were under 19 years of age; 29% were between 19 and 64; 23% were between the ages of 65 and 74; and 35% were over 75 years of age. About 31% of all the applicants in 1996-97 were required to be seen by health professionals for assessment at an assistive devices assessment centre. These clients received custom-made prosthetics or orthotics, life-support ventilators, nasal continuous positive airway pressure devices and high-cost, high-tech visual and communications devices.

There are 297 of these approved assessment centres throughout the province of Ontario. As we have indicated to the Ombudsman in our correspondence and meetings, Ontario is committed to putting the patient first and ensuring access to health services. We are also committed to ensuring that every dollar spent in health care is spent on health care services for patients. The government is committed to the principles of the Canada Health Act, to provide accessible, universal and comprehensive health care to all Ontarians in every part of the province.

#### 1100

The ministry wants to put access to services as close to home as possible. The preferred Ontario solution regarding access to assistive devices assessment centres is now being acted upon and is increasing the number of assessment centres.

In 1996-97, \$5 million was reinvested in the vision and communications category. Some of this funding was used to increase the number and location of assessment centres. Since November 1996, assistive devices has established

new technology visual aid assessment centres in Ottawa, Sudbury, Toronto and Hamilton.

The ministry's approach to geographical access is to provide necessary regional centres. This approach has been taken for a number of reasons. Specialists, by their very nature, are few in number and not available everywhere in the province. Maintaining specialty skills requires a certain minimum practice volume and these volumes can only be met if there are enough patients. Support to such facilities, equipment and specially trained staff are expensive and can only be justified if they serve enough patients.

Most people can be assessed locally for many assistive devices, but some require very specialized professionals and supports, clinics and labs. These are organized on a regional basis.

Clearly, the Ministry of Health must be concerned with the serious implications and possible precedent which would be set by a departure from the Ministry of Health's policy not to pay for travel except in very restricted circumstances for those in the north. Were we to pay for ADP assessment centres and for assessment of one type of device as recommended by the Ombudsman, wouldn't it be considered unfair not to pay for travel to an assessment centre for a different type of assistive device such as a prosthesis?

People now know that they have to travel to centres of excellence, such as the Princess Margaret Hospital for cancer treatment or the Hospital for Sick Children for specialized paediatric care. Specialized cardiac care like bypass surgery is not available in every community in Ontario. The cost of these surgeries and the need for a highly developed level of expertise leads to the development of specialized services in specialized centres.

If Ontario Health began to pay for travel for all specialized health care services, where would we draw the line as to what travel we pay for or what travel we do not pay for? If we were required to pay for travel to specialized health care services or even all health care services, the cost would be high and an unreasonable burden would be placed on our current health care budget.

The ministry's decision not to pay for travel outside of the travel to specialists by residents in northern Ontario is based on our need to use all available resources for the provision of health care services themselves. Our position on travel has been consistent over time and is consistent with the general policy of other jurisdictions in Canada. The health care system is based on making health care services universally available and as close to home as possible.

If you like, I can now answer some questions.

**The Chair:** Thank you very much for your presentation to the committee. I will now open it up to members of the committee.

Mr Agostino: I have a couple of questions. You talked of the fact that it wouldn't make sense financially to open up an assessment centre in every community across the province, and I agree with you there. Obviously if you've got a community where the need is not that great, you may

not want to spend that kind of money to bring in the high-tech equipment and what's necessary to do that.

Based on that, wouldn't it make sense to compensate for that by allowing some help for people who don't have an assessment centre in their own community? Wouldn't it make sense to say, "We understand the gap that is there, we understand that it would be financially unreasonable to put a centre in every single town and city across Ontario, therefore we're going to compensate for that by helping you get to that centre," instead of making the decision to put a centre in a small community where the need is not that great, as an example, and it wouldn't make sense financially? Doesn't that seem a reasonable tradeoff?

Ms Lindberg: The issue is, if we pay for high-tech vision aids, because you have to travel from Windsor to London or Hamilton or Waterloo, why would we not pay, then, for travel for any other health services? That's the issue. We don't want to set a precedent based on one high-tech vision aid, because you really do have to travel to get a number of other health care services in the south. We prefer to spend our money actually on the provision of health services.

If there is a critical mass of enough people, we will establish those centres as close to home as possible, but where do we put the limit for the payment for one vision aid or communications device, versus paying for some-body who needs a very expensive and personally fitted prosthetic which they have to go to Toronto for because they are the only people who make it, versus paying for somebody who has to travel for an MRI? We have decided that what we would like to do is make sure that we're spending all the money on health care resources.

Mr Agostino: The concern I have with that principle, and this is not the time for that debate, is that you really are moving clearly away from a universal health care system based on ability to pay. What you're saying is that the principle you're applying — for instance, if a parent has a sick child who has to go to Sick Kids in Toronto and has the ability and the means to take that child to Sick Kids, that child will be guaranteed access to the best medical care we have in this province for kids. If a parent next door has a sick child in the same condition and doesn't have the means or the funds to take that sick child to the hospital in Toronto, that child, as a result of being in a family whose income is not the same as their neighbour's who can afford to take their child, is denied the health care that may only be available at Sick Kids. Is that a principle you are saying you agree with?

Ms Lindberg: No, that is not the principle at all. Our principle is that we want to spend the money on health care. There is available means — and currently we have no complaints — that if your income is low and you're on a disability pension especially, you can make a special application and get special funding from your family benefits group in Comsoc. There are other ways of getting travel costs. Easter Seals helps most of the people who need prosthetics with their travel costs. There are other ways.

We are not trying to say that we have a two-tiered system and are keeping people away from access to health care. What we are saying is that it is important that we are able to supply the health care that is essential for the people of Ontario. That's where we put our resources. There are other ways of getting some support. We have other programs that help do that. So we are not promoting a two-tiered system at all.

Mr Agostino: At the end of the day, though, if someone has no access to the programs, if someone cannot get Easter Seals to pay for their trip to where they have to get the assessment or to go to Sick Kids, if someone cannot get a neighbour or a friend, if someone is exhausted, all those, you do not believe there should be a government program at the end of the day that would kick in and help that person have access to the centre if they've exhausted all the other means you've suggested here that are available. So of two people next door to each other, if one can get there by one means and the other one can't get there after they've exhausted everything, I guess it's tough luck. They're stuck and they can't get that assessment.

**Ms Lindberg:** But I don't know that it should be the Ministry of Health that gives that, that spends their resources. There are places you can go —

**Mr** Agostino: So you're not arguing with the fair access, you're asking who should be paying for it, whether it's health or another ministry.

Ms Lindberg: Yes, that's right.

Mr Agostino: It's not a question of the access. Do you not agree, though, that once someone has exhausted all of the available community resources or opportunities to try to get assistance for that, there should be some program in place by government that would help that individual make sure they access that centre or that hospital or that clinic if nothing else is available in their own community? I'm not asking who should be paying for it, whether it's health or Comsoc or anyone else, but that that principle should be established as part of our health care system or our system of helping people in Ontario.

**Ms Lindberg:** Yes, I think we want to make sure that people have access to the health care they need. One of the basic principles of the Canada Health Act is accessibility to health care.

Mr Agostino: So your major concern is that it shouldn't come out of the health budget.

**Ms Lindberg:** The money we spend should be spent on providing health services.

Mr Agostino: But you would have no objection to other government budgets that would pay for this program.

Ms Lindberg: I can't make policy for the government. What we're looking at here is whether we should be paying travel grant money to somebody to access a high-tech vision centre. We're saying we don't think that that is where we should be putting our resources. We should be putting our resources in providing for other devices or these devices to the people who require them.

1110

The Chair: Just to verify, Mr Gerretsen, did you raise your hand? I have a number of speakers: Mr Wood, Mr Preston and Mr Gerretsen.

Mr Len Wood: Thank you for coming forward. There are a number of different ways of making sure that people have access to this assessment. I don't know whether the type of equipment in this particular case is portable and could be moved around. But one of the ways of reducing the costs of the northern travel grant is, as you had said in your comments, to encourage specialists and various people in the medical field to move to the north, or if they don't stay there permanently, to go up on tour and treat people.

We have large numbers of communities that don't have any dentists; they don't have any doctors. There are 1,000 or 1,500 people living in towns where they don't have any specialists whatsoever, yet the Ministry of Health makes sure that dentists go there on a regular basis, that general practitioners go there and other specialists go to those communities and treat a number of people at the same time. Would this not have been possible in the case of this person who seems like he's at a very low income level, a poor person, where he's being told, "If you can get to the centre, if you can scratch enough money to get to the centre, the Ministry of Health will probably pay for this equipment, but if you can't make it there, you're out of luck"? Would it not have been possible to have a mediation process kick in and say we have to find a way of assessing this person in Ottawa rather than just letting him fall through the cracks?

Ms Lindberg: We got the centre opened in Ottawa so that didn't happen again. As I understand it, this person actually has withdrawn his application — could now access this centre and has now withdrawn the application.

Mr Len Wood: In this particular case the situation could be resolved, but there are other situations, as I talked about earlier, that I'm sure are going to develop.

Ms Lindberg: I don't really want the Ministry of Health people to think we're not compassionate. We'd really like to be able to focus on making sure that people have access as close to home as they can. However, our budget is set very restrictively according to what we can pay for. We would like to pay for devices because there is a huge demand for all kinds of devices; we try, and we have people go to their local assessors and look at what can happen. We work with these people to try to get them accommodated. We don't have very many complaints about people not having the ability to access these centres, because we work with the people to get them to the centres in whatever mechanism we can.

**Mr Len Wood:** Your argument is that if another case were to happen in Sarnia or Windsor or in North Bay, you would attempt to either get the service to this person or get the person to the assessment.

Ms Lindberg: We'd work with the person to make sure they were not denied access to that. We would not necessarily pay for their travel, but we would make sure

there's some mechanism available for them, and tell them the mechanisms that are available.

Mr Len Wood: In this particular case they went to the Ministry of Health, went to Premier Mike Harris, and everybody just ignored the situation, from what I can gather in the information I have.

Ms Lindberg: I don't think the individual came to us and asked for this. The Ombudsman's recommendation has now proceeded through. Our argument to this day is that we, as the Ministry of Health, should be paying for health services. That's where our money should be spent. We don't think we should take the limited money we have for this particular program and use that money to pay for travel, which would give us less money to pay for the devices, and the precedent that would set for other devices.

But if individuals phone us and say, "We can't access, we have no means of accessing that centre," we work with the person to find them a mechanism that will help them get there, whether we work with the Ministry of Community and Social Services through their disability pension, whether we work through a service club, Easter Seals, however; we work with them. When they call us individually, we have people who will work with them to get them access to that centre.

Mr Gerretsen: I have a number of questions. It just seems to me that the program is not universally accessible if people can't get to the program. What's your total budget for this program?

**Ms Lindberg:** It's \$80 million. That's not just for vision aids. That's for the assistive devices program.

**Mr Gerretsen:** How much does it cost you on an annual basis to operate the centre in Ottawa?

Ms Lindberg: I don't know; about \$50,000.

Mr Gerretsen: How many people are seeing this centre on an annual basis?

**Ms Lindberg:** I don't know. I just started. About 408 people access high-tech vision aids. That's for 1996-97. We had 408 people access the high-tech vision aids.

**Mr Gerretsen:** Just so that I'm clear, this is not a program that is mandated under the Canada Health Act?

Ms Lindberg: No, it's not.

Mr Gerretsen: It's just a program that Ontario got involved in a number of years ago.

Ms Lindberg: Yes.

Mr Gerretsen: According to the pamphlet that you hand out — and I assume that the assistive devices program pamphlet is something that comes out of your branch of the ministry.

Ms Lindberg: Yes.

Mr Gerretsen: It only deals with people who have long-term physical disabilities, so if you have a short-term disability, you're not eligible under this program. Would you say that most people on this program, from the statistics you gave us earlier, are seniors? I believe you said 68% were over 65 and are either seniors or are living on a disability pension.

Ms Lindberg: I would assume the number would be at least that high living either on disability pensions or sen-

iors, because the program is based on having a long-term disability. Usually those people are on some kind of disability pension or they're retired and are seniors on a pension.

Mr Gerretsen: With all the statistics you keep, you must have some idea of what the average income is of the person who applies under this program.

**Ms Lindberg:** We have not and do not have the right to ask anybody their income.

Mr Gerretsen: Okay. I find it very strange that a person only goes through this process, according to your pamphlet, after examining the individual. "The doctor" — who I presume is the person's own doctor — "will describe or confirm your physical problem on the form." So this person has already gone through the medical examination with their own doctor. Then, "You will be asked to sign the form so that your doctor can release your diagnosis to people who will help you select devices best suited to your needs." That goes to an authorizer, I assume.

Ms Lindberg: Yes.

**Mr Gerretsen:** Then you say, "Usually your doctor will refer you to an authorizer." That's the individual who is in these authorization centres, correct? That's the person hired by you to make sure that — no?

**Ms Lindberg:** No. They're registered with us, but they are assessors who do the work for us. They get paid by OHIP if it's a doctor. We don't pay them from the program.

**Mr Gerretsen:** Are these people, the authorizers, the 292 people you were talking about?

Ms Lindberg: No, there are thousands of authorizers. You can go to a local physiotherapist and get authorized to get a wheelchair, or you can go to the local optometrist and get authorized for a low-vision aid. There are all kinds of authorizers across the province. These 297 specialized centres we have are for high-tech, especially those who require different kinds of assessment, whether it's a titanium prosthetic, when a child needs an artificial limb or that kind of thing. Then they must travel to one of these assessment centres.

**Mr Gerretsen:** So there are two processes. You have to be assessed by one of these 297 assessors, who I assume are across the whole province, and then you have to go to a centre.

Ms Lindberg: No. It's a progressive thing and depends on your disability and on what device you're accessing. If you just need a wheelchair, then you go to your local physiotherapist, who will then measure you up and do what is needed to get you a wheelchair. If you need a magnifying glass for your eye, you can go to an optometrist who is registered with us and they can order that and we will pay for it. But if you need a titanium prosthetic artificial limb, then you might have to go to Bloorvale to get that assessment, because they are the people who make those very specialized items. So there's a range of where you have to go, depending on the specialized expertise required for the fitting or the requirement of those types of things.

1120

Mr Gerretsen: Yes, but what I'm trying to get at is, what percentage of people who get help under this program actually end up at one of these centres you've now set up across Ontario? What percentage are we talking about?

Ms Lindberg: There are only 408 people who need high-vision aids, and we've got eight centres now and we're going out for four more, so we'll have 12 vision aid centres and there are 400 people across the province who require it.

**Mr Gerretsen:** So each one of these vision centres would on average serve about 30 people.

**Ms Lindberg:** Could be, yes. They're not a separate infrastructure centre. They're usually a specialized centre that becomes an authorizer for us and does this for us. They're doing a lot of work other that our work.

Mr Gerretsen: Right, but it would still average out to about 30, and the one operation in Ottawa costs you \$50,000, so that's about \$1,500 dollars a patient. What I'm asking you is: Wouldn't it make a heck of a lot more sense to pay the travel costs of these people than to set up all these centres that are used by the relatively small number of people who are eligible for your program?

Mr Gordon Kumagai: The centres have equipment etc, so there's an infrastructure they have to have. If you were to pay the travel, you'd still have the problem of having the infrastructure. There are staff salaries etc, so there are various components, and \$50,000 in itself is not large enough. It would be the equivalent of maybe one FTE, one full-time equivalent person. It obviously is a limited amount.

The 400 is currently with the four existing centres. The four that started up are in the startup state, so they're not at full capacity. The number they're seeing is more than the 30 each that you're suggesting. It's not really 400 divided by 12, because four aren't established yet. The four are in startup phase, so they're not in full operation, if you like.

Mr Gerretsen: What I'm getting at is, has anybody in your ministry — you're so concerned about the dollars and cents, and I totally agree that the dollars and cents ought to be used for health care. But if people don't have access to the health care, then they cannot benefit from it either. I think the question of access is integrally related to the extra health care dollars. That's why I don't buy your argument at all that you don't want to use your money for travel in these particular cases. The travel cases get these people the access. Has anybody done a study, a financial study, as to whether or not it would make more sense to pay the travel expenses of these people to go to two or three of these centres across Ontario rather than setting up all these individual centres that, as you said, have their own infrastructure costs? They've got their own staff costs, and what have you.

Mr Kumagai: The money we're providing is temporary funding to get them established. It's not the ongoing operating costs, so there is the equipment etc that they're buying with it. If we went to paying for people to travel to

these centres, you couldn't just take the \$50,000 and apply that to the case, because they still have to go someplace and have the work done. It's an add-on. It's not really a substitution.

Mr Gerretsen: No. But do you have an answer to my question, that before you went into this program of establishing the centres, did you actually do a cost analysis as to whether or not it would make more sense to bring people to the existing centres rather than to set up all these individual centres?

Mr Kumagai: I'm relatively new in this position and I'm unaware of whether that was done, but I can't say with certainty.

The Chair: We have a number of other questioners and it's time to return, if you will.

Mr Douglas B. Ford (Etobicoke-Humber): I'm listening to this conversation here. There are very few things in this world that are absolutes, and that's a situation where it's nice to think theoretically that you can do all these things. But if somebody lived up in Churchill, say 100 miles off the Saskatchewan border in Ontario —

Mr Gerretsen: Manitoba border.

Mr Ford: — if they radioed to you that they needed this type of service, you mean you would fly an airplane or something within 100 miles and track through, pick them up, bring them out, get them back here and service them? This is ridiculous. You can't take people constantly by these things.

You're providing a service. That doesn't mean you have to go and get them, bring them in, service them and take them back. We service in everything we have, in all the health care, regardless of whether it's for transportation or whether it's hydro power. We don't set up a hydro line way out in the boondocks for these people. We put a generator out there or something to assist them. You can't have airports in every little vicinity. It's ridiculous. The same with this travel thing; it escalates.

It's nice to say, "We'll pay your fare here," and all of a sudden somebody says: "I'm going to get a blood test. Will you pay my fare?" The whole thing escalates into one big mushroom, and that's where it starts. I think you're providing an excellent service regardless of whether it's in health care or any other services. You're providing a service for them. You don't take them by the hand, everybody in this world. If they had to have a heart bypass or something like that, they would have to travel to wherever it's being done, either in Toronto or Montreal or wherever they specialize in these cases.

There are indigent people who do not have the money to do these things, but you assist them if it's possible. If it's not possible, then it's unfortunate. That's the way the whole world revolves.

The Chair: Mr Ford, do you have any further comments?

Mr Ford: That's all I have to say, that everything is not an absolute. If you'd like to start and say it is, well, it's not. I could name hundreds of situations like that and they're just not absolutes. It's like somebody living in the wilderness up north wanting their roads plowed out. I've

been up north. I've lived up north, I've lived down south and there are certain things you have to put up with. If you're living in the backwoods there, you can't expect a snowplow. If you say we're plowing the roads, that doesn't mean you're plowing for every little Tom, Dick and Harry with a cabin out in the wilderness. You know that. That's a fact.

**Mr Len Wood:** Why do they plow the 401?

**Mr Ford:** Because there are several hundred thousand cars paying for the 401.

The Chair: Mr Wood, if you'd direct your comments —

Mr Ford: So one guy lives out in the boondocks and you're going to plow his road?

The Chair: Mr Ford, if you would direct your comments to the Chair; and Mr Wood, Mr Ford has the floor. The next speaker to be recognized is Mr Pettit.

Mr Pettit: There's no doubt this is a complex issue, but I'd like to get back to the "limited means" thing a little bit. Are people of limited means eligible for, or do they have recourse to, out-of-pocket expenses such as, let's say, if it were Mr S? I just want to cut to the chase.

Ms Lindberg: Not from our program.

Mr Pettit: You say that someone in that situation can apply to other groups for funding, such as the Easter Seals etc. Is that correct?

Ms Lindberg: Yes.

Mr Pettit: What if someone in that situation cannot get the funding from Easter Seals or whoever the case may be?

Ms Lindberg: If they're low-income and they're eligible for social assistance, social assistance will give them a special grant to travel.

Mr Pettit: What if they're not? What if they're just above the line?

Ms Lindberg: If they phone us and talk to us, we would probably go to a service club such as the Rotary and ask them.

Mr Pettit: You would, on their behalf?

**Ms Lindberg:** We would work with them to help them get some kind of means.

**Mr Pettit:** So in the end, one way or another that person will get to that assessment centre?

Ms Lindberg: We work very hard to make sure there's nobody denied assessment.

Mr Pettit: But will they definitely get there, yes or no?

Ms Lindberg: We'd work very hard. If they decided they didn't want to go or wouldn't take the money from the service group that was offering to pay for it — we can't make them go, but yes, we would work very hard so that they would have a means to get there.

Mr Pettit: Okay. I'd like to get back to the member for Kingston and The Islands, his point, and that is: Yes or no, was there a study ever done on paying travel costs versus just saying, "We'll open assessment centres here, there or anywhere else"?

Ms Lindberg: No, but if —

Mr Pettit: No? Ms Lindberg: No. **Mr Pettit:** Why not?

Ms Lindberg: One of the things I just indicated was that 127,000 people are eligible for ADP. The average travel cost in our northern travel grant is \$100. That's \$1.27 million it would cost us if we put \$100 on each person who was eligible, and that's pretty low, to travel to these assessment centres.

1130

Mr Pettit: On the other hand, how much does it cost to open up all the assessment centres?

Ms Lindberg: Probably not a lot of money. These centres are already there. They are ophthalmology centres for high vision and there are ophthalmology centres that are already doing other kinds things. It might be a physician doing cataracts as well and looking after glaucoma who will also be an assessor for us and he happens to have this extra equipment he can use for high-vision aids.

We're not setting up an infrastructure centre. The centres are already there, in existence. All we're doing is assisting them to maybe purchase a different type of equipment or do some training for some existing staff. They become what we call an assessor and then the people go there and get assessed. We're not putting out millions of dollars on equipment to these centres. We're assisting them to get some training and to maybe upgrade some of their equipment, but very little money. They're already there. They're usually run by ophthalmologists in these centres who are doing other things than just the assessment for the high-vision. It's not a separate little centre you go to and get this work done.

Mr Preston: It's private enterprise already and then they take this on.

**Mr Pettit:** In questioning the Ombudsman, I think she indicated that she was unaware of any complaints other than Mr S's. Is that correct?

Ms Lindberg: Yes.

Mr Pettit: Did you not say that? Since Mr S's complaint, were there any other complaints?

The Chair: Mr Pettit, if you could confine your questions to the delegation before us —

**Mr Pettit:** Are you aware of any other complaints since Mr S?

Ms Lindberg: On vision?

Mr Pettit: Yes.

**Ms Lindberg:** No. We are aware of no other complaints on —

Mr Pettit: The bottom line here is that you say you will go out of your way, or the ministry will, to help anyone through any avenue to get access to this centre. What if I am very hard-pressed, I live in Timbuktu and you can't get Easter Seals or Comsoc or anybody else to help me? Where am I left? What happens to me? Or in 99% of the cases —

Ms Lindberg: We do not have and could not pay for that out of our program because it would be counter to the Provincial Auditor's rules about where we spend our money. Our money is spent for devices, so we could not spend it. But we would work with the local hospital, with the local long-term-care people, with whoever we could to

try to find a means to get that person where they have to go. We do that not just for assistive devices; we do that if they have to go for cancer treatment and they don't get cancer treatment.

Mr Pettit: If I've overlooked something here, what was done in the case of Mr S in terms of helping him to pay any costs?

Ms Lindberg: I don't think we should get into an individual's case. That's probably not what we should be discussing. What we've been told and what we know now is that he actually decided to do something different. We don't know.

Mr Pettit: Okay. Thank you.

The Chair: Very good. We've got a number of questioners now. It's getting a little more interesting: Mr Preston, Mr Wood and Mr Gerretsen, and with that we'll try to conclude the questions at this point.

**Mr Preston:** I think what's you're saying, and despite the attempt at a cheap shot what Mr Agostino was saying, and what I said right from the beginning was —

Mr Agostino: On a point of order, Mr Chair: For Mr Preston to suggest that there was an attempt at a cheap shot—

The Chair: I would ask you to confine your comments to the subject of the moment. Thank you.

Mr Preston: Okay, I'll do that. Point made.

We all kind of agree that possibly travel grants for the whole spectrum, not only for health, should be looked at, and not by health because health should be spending money on health; possibly by Comsoc, possibly by — whatever. The situation of distance is partially being ameliorated by your not setting up but your taking on new testers all over the country. At the end of the day, when everything has been exhausted as far as the person's means and the government's means, that in theory a person can't get to where he wants to be, in fact there is somebody out there who helps them get what they need. Is that what you're actually trying to tell us?

Ms Lindberg: Yes, I think so.

Mr Len Wood: The cost of transportation, whether it be train, bus or car from Ottawa to Toronto — you're saying this particular individual dropped the case, but the frustration he must have gone through in exhausting all the avenues he had and end up going to the Ombudsman, which is the last resort. Has there been any follow-up to find out what his needs are now, whether he's still permanently disabled and needs this particular device or whether because of a \$25, \$30 or \$40 additional cost — I'm sure it wouldn't be much more than that from Ottawa to Toronto. What kind of life is this person living now when he knows the equipment would have been available to him? But I guess he had exhausted all the avenues, whether it be Easter Seals or whatever, because of a small fee.

What kind of situation is he living in now compared to what he could have been living in if we had either sent a person to his residence to have him assessed and get him the equipment or leave him in the condition he's in right now? Has there been any follow-up on that?

Ms Lindberg: No, we wouldn't follow up because we probably wouldn't interfere with his privacy. We were told that he has a satisfactory solution. Whatever that means, I don't know, and I can't get into specific comments about the case.

The Chair: I would caution that we need to deal with the very broadest definitions in the case here. I would ask members to contain their questions that would perhaps create any indiscretion in the information provided to us.

Mr Len Wood: I agree with you, Chair. But I'm not saying anything here that is any different than what was in the Toronto Star on October 1, 1997. I'm concerned.

It's quite obvious from the media attention we've had here today that there is going to be more coverage of this particular battle between the individual with the support of the Ombudsman and the Ministry of Health. I point out that it's also gone to the Premier, Mike Harris, for him to intervene and the Premier hasn't taken any action on it.

The Conservative members on the committee are saying that it's okay that people in Toronto or in the large centres are treated in one way and people in remote areas and other areas are treated another way. An example, "We plow the roads in Toronto, but why do we have to plow the roads in some of the remote areas in other communities?" It's ridiculous, some of the comments that we're hearing today.

As far as I'm concerned, if a person has a serious car accident in Toronto and needs a helicopter or a plane to get him to a hospital, he gets it. In Kapuskasing or Hearst or whatever, if a person has an accident in the bush and needs a helicopter or an air ambulance, we don't question the cost. The doctor phones up for an airplane or a helicopter and they're delivered to the proper place they need treatment in. This is the way I would like to see it continue, rather than hearing some of the comments like, "If there are only three or four or a dozen people living in a community, we can't plow their roads and we can't give them the services they need." It's ridiculous.

#### 1140

I know you're not going to be able to respond to that situation, but it's frustrating for me as a northern member hearing some of the comments that come out, that because we get assistance to travel to specialists or hospitals we're being treated in some special manner, or because our roads are plowed in northern Ontario we're being treated in some special manner compared to people who live in the big centres.

I think I've pretty well exhausted my frustration at some of the Conservative members on this committee, the way they are speaking on a case of this kind and drawing in the other examples.

The Chair: I guess we'll conclude with a comment. Mr Gerretsen, please.

Mr Gerretsen: They're not just comments, but also some questions. By the way, the reference to road clearance is rather a bad example to use since the province has just about downloaded every road in Ontario. In eastern Ontario we've got four highways left, so local

municipalities will now be doing the snowplowing across the province.

I'm somewhat concerned that some of the government members feel that this particular case has been solved because the gentleman gave up and therefore there's no problem here at all and we can somehow do away with it. It's the principle we're dealing with here. It's because of the principle that I take it the Ombudsman brought this matter before us, that if we really want this program to be universally accessible, then the question is: If a person cannot get to the place where they can become eligible for the program, are we truly making it universally accessible? That's the situation we're dealing with. Whether or not this particular case has been resolved in a certain way is not important.

What I'm also concerned about is, in answer to a question the assistant deputy minister asked, that she's not aware of any other complaints of this nature going to the Ombudsman and therefore it's just an isolated case. I don't think the government members can have it two ways. If it is an isolated case, then why can the ministry not make funding available in emergency situations where all other resources such as Easter Seals - I've got some familiarity with that. I was involved in my Rotary Club for a number of years. Rotary Clubs across the province are very heavily involved with Easter Seals and they provide this kind of funding for people. But I can tell you there are many people who, if it weren't for those kinds of programs, probably couldn't access a lot of programs such as the assistive devices program if it weren't for that kind of funding.

There are people out there who simply don't have those kinds of facilities available, and they're probably in the more rural areas. There may not be a Rotary Club that's involved with Easter Seals or there may not be other services available so that they can access funding that way. Surely to goodness the ministry can adopt a policy, in situations where all other resources have been looked at and have been found lacking and the person still doesn't have money to access this kind of program, that case money can be made available.

It seems to me — and I don't mean to take a potshot at you or at the ministry — that it's a question of turf protection. You don't want to see your money being used for services other than health care, yet these centres are being opened up. We all know something about what it costs. Sure, other services are provided at these centres as well, but there are costs connected with that.

I just wonder, if a financial analysis were done, whether or not it wouldn't be a heck of a lot cheaper to assist those people who really need the financial aid to access the services in three or four centres across the province than setting up all these different centres across the province. To my way of thinking it's a question of turf protection. Let's not blame another ministry. If you send it to Comsoc, it will take years to get that resolved. There are people out there who need access to these services right now.

Why don't you people in the ministry, with all the brain power you have there, come up with a solution so that you can help those people? I'm quite sure we're not talking about that much money, particularly if you say these kinds of situations don't occur all that often. That's the challenge I leave with you and with your minister, to do something about it.

Mr Parker: I just want to return to the specific case of Mr S for a second, because after all, that's the case that has been brought before us. I presume he brought his difficulty with travel arrangements to the attention of the ministry. Is that correct?

Mr Kumagai: Yes.

Mr Parker: What steps were taken to assist him?

The Chair: Would you mind introducing yourself for the Hansard?

Ms Carol Jones: I'm Carol Jones. I'm a manager, professional services, with the assistive devices program. It's my understanding, because unfortunately what you're seeing are a few new faces here, that some attempt was made to have someone sent to his home. We were not able to get an assessor out there. He did go to an ophthalmologist for a low-tech assessment and received some funding from ADP that he put towards the cost of the device he finally purchased.

Mr Parker: If he had been on social assistance, would there have been a fund available to assist him with travel costs?

Ms Jones: I believe there are some discretionary funds through social assistance, but I'm not sure if he was eligible for social assistance.

Mr Parker: Can you just review again the types of steps that are taken by the ministry to assist with travel arrangements for people who find it difficult to travel to assessment centres?

Ms Jones: Generally speaking, the individual would contact one of the professional staff at the program. Often they will contact social assistance. If the person is on the home care program, they may go there. We then try to see with some of the non-voluntary agencies if we can get some help there, or with the Rotary Club, that type of thing. Basically it's contacting these at different agencies and asking if they will help. We can't really make them do any of this but we will try to make every effort to have that happen. It does not happen very often.

**Mr Parker:** This has been brought before us as a case where access to the ADP program was denied because of difficulty with travel. How many cases do you have where access to the program has actually been denied because of travel problems?

Ms Jones: I'm not aware of any being denied, and in this case the person received some funding from ADP, so it wasn't denied in the sense that he didn't receive any dollars from us.

**The Chair:** If there are no further questions, thank you very much for your time.

Mr Gerretsen: I have a motion, Mr Chair, that the Minister of Health should ensure that appropriate financial assistance is available to applicants of the assistive de-

vices program to offset the cost of their travel to and from program-approved assessment centres where such assessments are necessary for the purpose of determining their eligibility under the program for high-technology visual aids.

This is the recommendation of the Ombudsman.

The Chair: Is that written?

Mr Agostino: On a point of order, Mr Chair: Before we go further, can I ask for unanimous consent of the committee to allow the Ombudsman to clarify the issue — I think there's a tremendous discrepancy here between the number of cases, or whether this case is resolved — to give the Ombudsman the opportunity to simply clarify the issue or the resolution of the case and whether other cases are available? There is contradictory information there.

The Chair: First, we have a motion. We should deal with the business in sequence. The motion is first.

**Mr Agostino:** The point of order is important to the motion, Mr Chairman. I would ask you to ask for unanimous consent to have the Ombudsman clarify that.

The Chair: We can defer the motion.

Mr Agostino: Mr Chairman, I believe a point of order is allowed.

The Chair: Do we prefer to deal with the point of order first? Is it the wish of the committee to deal with the point of order?

Mr Agostino: We have to. We have no choice.

Mr Pettit: We'll deal with the point of order.

**The Chair:** Dealing with the point of order, the request, I gather is to —

1150

**Mr Agostino:** Do we have unanimous consent to allow the Ombudsman to clarify the point of eligibility with this case and other cases that may be available. It's simple; no questions or anything like that.

The Chair: Very good. Perhaps we could ask you to join us at the table again for a clarification.

Ms Jamieson: It has been the practice that I'm asked to speak to whatever the ministry has raised and try and sum up, and I will speak to the issue the member is raising about clarification.

In the case of S, S did receive assistance for low-tech vision assistance, gave up on the question of high-tech and so made the personal sacrifice to do without that assistance from ADP because that was not available. So yes, there was some assistance, but it wasn't what he was after. It wasn't what the program is supposed to provide, the high-tech vision assistance which is different than the low-tech. Low-tech: There are many more facilities available to manage that. There is not for high-tech. So that is the case of S.

Much has been made about numbers of people and complaints and so on. It is in the nature of this kind of issue — let's remember who we're talking about, people with disabilities, people who are among the most voiceless in our society, people least likely to complain, least likely to raise the issue and push it forward and have the assistance available to them to bring these issues forward time and again. You are less likely to hear from them, frankly,

so I would ask members not to put a lot of eggs in that basket.

I would also clarify that I did not say this is the only case of which I am aware. This is the case I have brought forward to the committee and on which I've tabled a special report. Any other inquiries I may have in the field, whatever, I can't talk about as yet, nor would I. Under the act I'm not allowed to, but I ask you to look at the statistics the ministry has brought forward, the numbers of people who've come forward for this assistance. The clarity of our own statistics: We know how many people in the province are disabled. We know what their income level is. We know they are poor.

The other thing I want to just review is the ministry's reasons for not taking this step: "We don't want to set a precedent. We can't address the barrier here because we'll have to do it everywhere." I think in those cases what you end up with is a situation where the only alternative then is to fortify the barrier which exists today and which my investigation has shone a light on. That's what happens when you get to the end of that rationalization.

You are basically saying: "If you cannot get yourself to an assessment centre because you are too poor or too far away, you do not have access to this program. We will not address the problem, because although we recognize it, we'd rather spend our money elsewhere." That's what I'm hearing from the ministry.

I applaud them for wanting to spend money on the health services in the province, but I think if that's the case, and if they fortify this barrier, then they are basically saying, "This program is not universally available." It is fundamentally flawed for the ministry to make that statement because accessibility is fundamental to universal availability and it's the access that is being denied in this case.

Finally, let me say to the committee that it is in this committee that you have the opportunity in a non-partisan way to address these issues, to balance the policy considerations that are inherent in this case and I think the self-evident unfairness that is here against the fiscal considerations. I say again there are a number of options available to the ministry to deal with this which involve expanding the envelope or leaving the envelope like it is.

One of them is to guarantee that at the end of the road, if people have tried to access every available means and they can't get it, then will the ministry undertake to make up that difference and make sure that person with a disability in fact has access to the program?

I just seek again the committee's intervention in this, the committee's support for my recommendation, so that those people out there who need these assistive devices will truly have access to them as the rest of us do in Ontario.

The Chair: Thank you, Ms Jamieson. With that, we have heard the Ombudsman's report and the response from the ministry. We also have before us a resolution or a recommendation by Mr Gerretsen. I would ask if the committee for its full deliberations could move in camera to discuss the resolution, which I think is perhaps the

expected action of the committee. With that, if there's no objection, I'll ask for permission of the committee —

Mr Gerretsen: Why are we moving in camera?

**The Chair:** Most frequently the decisions of the committee or the discussion about the actions to be taken by the committee are made and done in camera.

**Mr** Gerretsen: I don't agree with that at all. I think people have a right to know the rationale, how we come up with a decision, whether we support something or not.

The Chair: I could ask for information on what the protocol has been. It's my duty to act upon the wish of the committee. The clerk could perhaps tell us what has been the past practice of the committee in its deliberations on issues of this nature.

**Mr Pettit:** I don't think the government members are opposed to staying on camera.

**The Chair:** That's fine. But what has been the past practice? I think we should know up front.

**Mr Pettit:** Has it always been one way or can it go either way?

Clerk of the Committee (Ms Tonia Grannum): It seems as though it has been that in the past the committee has gone into closed session.

Mr Pettit: For what reason? Do we know?

**Clerk of the Committee:** Probably just precedent, history, but it's totally at the wish of the committee.

Mr Preston: I think if we're dealing with a name or something like that, we should do it in camera, but all we have is a Mr S here and Mr S is not really the problem, the travel is the problem. I don't have —

Ms Jamieson: Mr Chair, this issue has been raised with me and I neglected to raise it in committee. I apologize because I did raise it with the Chair and the clerk privately. I know committee has on occasion deliberated in open session and in private session. They have also come back to vote in public session, and indeed two or three cases ago there was a request from one committee member that there be a recorded vote.

The last two times that has not been the case. We've merely reconvened and then you've told us what the result was, but I don't know how the vote is coming out or the reasons for the committee's decisions, and I have then asked, quite a bit actually since the last case, what all this means, why the vote is not recorded when there have been instances in the past where that has been the case.

I merely want to raise for you that I have had occasion to have a peek at this issue, trying to figure out what my answer would be and that's what I've learned.

Mr Gerretsen: I think Mr Pettit made a very valid point. We have not discussed individuals' names in this particular case. There's absolutely no reason why the discussion can't take place in public and I would move that unanimous consent be given to have this matter dealt with in public.

The Chair: Without any further delay, the Chair has heard that we will stay in open session, and let's continue. What we have before us now is a resolution. The resolution is on the floor and address your comments to the

resolution. The first speaker in order of recognition is Mr Agostino.

Mr Agostino: I obviously speak in support of the resolution. Sometimes when we hear cases like this, and we've had the ministry say these cases are few and remote, you wonder what the bureaucracy is here to serve. You think of the fact it's one of the few cases I suppose that's come to attention. There clearly is a gap there. Let me suggest with all due respect that it has probably cost the taxpayers of Ontario significantly much more to have this process this morning than it would've to get this gentleman from Ottawa to Toronto and get that damned assessment done.

There's got to be some flexibility and discretion within bureaucracies. It can't be this massive thing somewhere that people can access. There's got to be some room there for some flexibility in individual cases to apply that. A person's exhausted the community resources to try to get there, the service clubs and so on. A decision to spend \$100 or \$200 to get this person from Ottawa to Toronto to get an assessment done should've been made at the ministry level. It would cost taxpayers a hell of a lot less than it's costing taxpayers this morning to have this thing on.

We've got to think a little bit of user-friendly bureaucracy and access to government. That thing has got to start happening more. I don't think it's happened in this case. To me it's not an issue of a lot of money being involved; it's simply a question of ensuring we don't deny people access to programs based on where they live. If you live in Windsor and you can afford to go to Toronto or London for an assessment, then you may get that hearing aid. If you live in Windsor and can't afford it and you've exhausted the resources, you can't get it. Most of us would agree that is wrong.

That being said, there's also a need to review the criteria. This is not a question of a government policy and an opposition-government issue. It really is non-partisan. The program was established three governments ago. There are flaws in the program. Often it's a program that's difficult to access. The program may be too generous from the point of view that it's open-ended. That's a question that maybe needs to be addressed as well. That could offset some of that.

It's not a question of partisan and the government and the opposition in this case; it's a question of knowledge. There's a weakness within the program that we have a responsibility to fix. If there's blame here, probably it has to go around to all governments that have been involved in this program. They haven't fixed those things in the past. It's not a question of the Tory government is doing something wrong and the Liberals and NDP before that did something right. The program is well-intentioned; it's a good program; it helps a lot of people. It's not perfect. It has room for fixing.

I think we've got a responsibility to help that along. I would urge the government members to support this. It's not going to be a lot of money. At the same time, if there's any pressure that can be put upon the government to

review the eligibility criteria, I would urge the government members to do so as well, because I have a problem with someone who has an income of \$200,000 a year or \$100,000 a year — as an example — accessing a government program that someone who has \$8,000 or \$10,000 cannot. I'd rather help the individual who has a pension of \$8,000 or \$10,000 access that program than someone who can afford to buy a hearing aid and to access that.

It's not part of the motion, but it's part of what I'd like to see done with this as well. I urge the government members to look at this, support it and realize it's not a government-opposition issue. It's just a question of fairness that we all agree has to be addressed.

Mr Len Wood: I also am supporting this motion brought forward by Mr Gerretsen for the simple reason that I don't believe, from hearing the presentation, that this situation has been resolved as yet. We have an individual here who was asking for some type of assistance in his travel from Ottawa to Toronto to be assessed for high-technology visual aids. He's been denied that. He went to the Ombudsman and the Ombudsman tried to intervene at the Ministry of Health level and at Premier Mike Harris's level. The situation, as far as I'm concerned, is still not resolved.

I personally don't know the financial situation of this individual, but his priority obviously is keeping a roof over his head and trying to get a little bit of food to eat and proper clothing, and not being able to spend the extra \$50, \$60 or \$100 that it costs him to improve the quality of his life. I believe that moving from the low visual aid that he's getting right now to high visual aid is probably going to improve the quality of his life. If we have one person out there who is caught in this vicious circle, it's one person too many.

Northern travel grants: Nobody gets the full cost of what it costs them to travel from a northern community to a specialist in southern Ontario or to travel within northern Ontario, especially if they fly or take other means of transportation. But there is some assistance available. In this particular case I would encourage the Ministry of Health to look at individual cases of this kind and say that there is no other alternative but to find some way of subsidizing this person for travel.

It's in Ottawa. It can probably be resolved quicker. But if other cases of this kind come up, this resolution would help to resolve it so we don't have people out there caught in a vicious circle, and at the end of six months or a year saying that we've exhausted everything and there's no other place to turn so that I just have to sit back and live in the condition I'm in, even though I know that, if I could reach long enough, there is assistance available, but I'm being denied it because I don't have that extra 10 cents in my pocket to be able to get that service.

Mr Preston: I will be voting against this motion, not because I'm against assistance for travel but because the money will be coming out of the wrong pot. Comsoc has discretionary funds that, when everything else is denied, can be accessed. Health funds should be used for health, not for travelling, not for bus fare, not for plane fare. If it

is absolutely necessary that any person get assistance, it should come from another source other than health care. We have many, many things we have to spend money on in health care that we can't afford and are looking for money to be able to buy. Bus fares should be somewhere else.

Mr Gerretsen: I'm very surprised at Mr Preston's comments because health money is already being used for travel purposes. I come from Kingston, as you know. I know that on a regular basis patients are being brought in from Moosonee and Moose Factory to Kingston General Hospital. They fly them in with planes and helicopters etc. Air ambulance is being used all over the place. There's nothing new about this.

I'm afraid that even though good intentions may be there by the person who just spoke, in effect all we're doing is just pushing it on to another department within the government. Basically we're not helping those who should be helped. It's all the same taxpayer. We hear about it from the Premier all the time. It's all the same tax dollars. Whether it comes out of Ministry A or B or C really doesn't matter.

The bottom line is there are people out there who need these services. They need to be able to access them. If there's any way we can help that, then we should be doing it. The resolution is broad enough that it doesn't say the money should come out of the Ministry of Health; it simply places the emphasis on the Ministry of Health, that they should help and assist the people to ensure that financial matters do not stand in the way of accessing the services in this particular program.

I hope other government members would agree with us and vote in favour of the motion.

Mr Parker: In all of this it's important we remember that the program in question is not mandated by any legislation. This is not mandated by the Canada Health Act. It's a program that's offered by the Ontario government. It's not offered by all provinces. It's offered according to its own terms. I haven't heard evidence that access to this program has actually been denied. I've heard it's been difficult. I've heard it's more difficult for some than it is for others. That in itself doesn't particularly shock me. I don't know that we will ever eliminate discrepancies in the ease with which certain people can gain access to certain programs.

Mr Preston made that point very effectively. I agree with the point he made. I've heard some argument whether the ministry is wise in addressing the problem of access by opening up new assessment centres rather than by providing travel allowance or travel assistance. I've heard speculation on that point, but frankly I haven't heard any figures so I think any speculation on that point is highly suspect.

#### 1210

The ministry has addressed the issue of access. It has chosen to address the issue of access by increasing the availability of assessment in various centres across the province. Maybe that's an effective means of addressing the issue, maybe it isn't, but there hasn't been evidence

brought before us this morning to enable us to make a judgement on that point. The ministry has taken its view and has pursued its policy and it's important for us also to bear in mind that the ministry has acted on the issue of access since the case of Mr S arose.

Whether Mr S had difficulty with travel or not is, as the Ombudsman has pointed out to us, entirely irrelevant to us; the issue is at most a question of access in principle. The ministry has addressed that question, in principle. The ministry has addressed it by opening up new access centres. We don't have a case before us dealing with issues of access under the current system, under the current day, with the number of access centres that are available out there. There are more access centres available out there now than there were when the case of Mr S arose. There are more access centres that are going to be opened in the future.

It's an issue that is being addressed by the ministry. It has been addressed since the case of Mr S arose, and as we heard in the evidence before us today, the issue continues to be addressed. The issue is being addressed by the ministry and this committee lacks the evidence to determine whether it is being addressed adequately or not.

It is prejudicial and it is presumptuous of this committee to suggest we have the answers to the issue. Bear in mind that access, according to the evidence before us, has not been denied to anyone, under the case of Mr S or anyone, or to anybody else. It is a matter of it's more difficult for some than for others, but it's not impossible for anybody, according to the evidence before us.

There are cases out there where programs are in place, and have been in place, and were in place at the time Mr S's case arose. We have the northern health travel grant program. That has been in place for some time. That is a program to assist a certain group of people in dealing with the cost of travel to gain access to this type of treatment. Whether that is an appropriate program or not is not before this committee to judge, but that is a program that is out there to address this issue.

We've also heard evidence that for someone on social assistance travel assistance is available to that person. So it's not as though somebody on welfare is denied access to this kind of treatment because of the cost of travel, because there are programs directly targeted to assist people who are on social assistance. There are programs in place to deal with this matter. There are programs in place to deal with the north, there are programs in place to deal with people on social assistance, and the ministry has taken the step of opening up new access centres since the case of Mr S arose. Anything else on the question of what the ministry should do and what would be more cost-effective is strictly a matter of speculation on the part of this committee.

But one thing that is not, and need not be a matter of speculation, is the point the ministry made, which is that if the type of recommendation that has been put before us in this motion is passed, then there are any number of other cases that could be brought forward to say, "If you get travel allowance for high-technology visual aids, why not

a travel allowance for my particular situation?" There would be a whole host of applications for travel assistance. Bear in mind that this program, the visual aid program, is not mandated by legislation.

Mr Gerretsen: So what?

Mr Parker: Mr Gerretsen asks, "So what"? As everyone in this room has conceded, either explicitly or implicitly, we are ultimately involved with drawing a line. Ultimately that's what has to happen. A line must be drawn. Unless you're just going to open up the pot and say, "Help yourself to whatever you need, and come on in and be assessed," there is going to a line —

Interjections.

The Chair: Direct your comments to the Chair, please. Mr Parker: Some people are going to fall on one side of the line and some people are going to fall on the other side of the line, and the question that ultimately has to be determined is, where do you draw that line and who's in and who's out? One of the pressures that will be brought to bear by the reality of that is, if the line is drawn at too high a level so that generous travel arrangements are made to gain access to an optional program, there will be pressure on the government to begin questioning whether it can afford to carry those optional programs.

Those are the kinds of decisions that are going to have to be made. I don't believe those are the kinds of decisions this committee should be making. Those are policy matters. Certainly those are matters that the Legislature can guide the government on, and the government will ultimately establish its policy, but that's the kind of pressure we would be inviting if we moved ahead on the recommendation made by Mr Gerretsen.

We are dealing here ultimately with determining where to draw a line which must be drawn. We are dealing here with a matter where the service being provided is not mandated by legislation, and we are dealing here with a matter where there is no evidence before us that treatment was denied. We are dealing here with a matter where treatment is more readily accessible to some than it is to others, and as Mr Preston points out, that's a fundamental reality of life that must be dealt with as matters of policy, but I don't see that as a matter this committee needs to get involved in in the degree of detail suggested by this recommendation by Mr Gerretsen.

The Chair: I will recognize the people who had raised their hand. We have Mr Pettit, Mr Agostino and then Mr Gerretsen.

Mr Pettit: I think the member for York East most eloquently addressed the fact that the access in principle question has been addressed by the ministry. To my colleague from Hamilton East I would say he somewhat craftily tried to turn what he's calling a non-partisan issue—he described that in a very partisan way, somewhat craftily.

To the member from Kingston and the Islands I would say that I don't believe this is a money issue, personally. If he thinks it's just small amounts, as small as that may be, he may want to go to his federal counterparts and ask for some of the money back that they extracted — some \$2 billion from us.

Beyond that I would suggest we should put this to a recorded vote.

The Chair: You're asking for the vote. We have speakers recognized by the Chair, Mr Agostino and Mr Gerretsen and Mr Wood.

Mr Agostino: First of all, what I said earlier, and frankly the comments by government members have changed my view, was that this was a non-partisan issue. I said that if there is blame for the gaps in this program, it should be spread out to all three governments that have been involved in the administration of this program. If you check back in Hansard, it would totally say the same thing I've just said now.

Obviously, it's unfortunate. You wonder why people get cynical about governments and members and how we operate around here. Here's an issue to me — these government members like to talk about common sense, the whole thing, the Common Sense Revolution, everything's common sense.

Here we've got a situation where clearly, when you look at it on its merits, it makes a great deal of common sense to allow some discretion in how it's applied. We've got a situation where people, whether it's one or 10 or 20, are falling through the cracks; a pretty good program that needs some fine tuning. Of course the government members must toe the government line and say no, because the government, the Minister of Health, the bureaucrats and the Premier's Office don't want us to do this. I find that extremely frustrating and I get angry because we are talking about a group of people who are vulnerable here.

We talk about drawing a line. Frankly, when it comes to wheelchairs, when it comes to hearing devices, when it comes to visual devices, when it comes to respiratory devices for people in need in this province, I'm not going to draw that line. That line is not important to me. If you're talking about someone who is disabled and cannot afford this, we're saying: "Well, we're drawing that line. I'm sorry, buddy, it's tough luck. You don't get that wheelchair because we have drawn that line for you."

That is not something I buy into. I think it's disgraceful

that we have a government that thinks in such a manner. We're not talking about choices here. Someone doesn't choose to be confined to a wheelchair. Someone doesn't choose to need an artificial limb. Someone doesn't choose to need a respiratory device. If we can't be compassionate enough, as members of the Legislature, and can't find some way of saying to those five, 10, 15, 20, 100 people in this province who fall through those cracks of a program that we can help them, there's something wrong. What the hell are we doing here? What are we here for?

I get extremely annoyed. I've dealt with disabled people in my working life and in my private life since I started working, since graduating from school. I see the hardships and difficulties people face, I see the struggles people face, and I see government, instead of helping, getting in the way of that. If we can't find it within ourselves to say,

"We're going to allow some flexibility in this program to help those few" — Mr Parker tells us, "We're going to open up new centres." Mr Parker tells us that many of the issues have been addressed.

If we are to believe and agree with what he says, then obviously we're talking about a few people who are caught here, who fall between the cracks. Why can't we have some flexibility in this huge bureaucracy that we call government to help those individuals? As members, when we've identified those gaps, if we can't stick up and try to help those individuals who fall through the cracks, where do they turn to? Who are they to turn to? That's what I think I'm here for. That's what I think you're here for.

I just get extremely annoyed that we stick to this bureaucratic approach to how we run this place and how we run this province and what we say to people who are most in need. I say to you again, it is not a matter of choice. These are people who have this need and these are people who often will have gone through — I've been involved in a program. I spent years working at the Ontario March of Dimes. Yes, our service clubs help. We've been involved with service clubs. We've also been involved in car washes, for God's sake, to try to get someone a wheelchair. Those things happen. But at the same time, there are people who can't get the help and can't get some more access to the program. We're not talking about a lot of money. If that expands to a wheelchair, I have no problem saying to the public and the taxpayers of Ontario, "Yes, I believe it's appropriate for the government to pay for someone to have an assessment so he can get a wheelchair if they can't afford it."

I have no problem defending that principle, in here or anyplace outside of here, or any of these other devices that are provided. I'm not afraid of that. I think most Ontarians are compassionate enough and frankly much more compassionate and understanding than members of this government who are going to deny this basic, fundamental right of Ontarians. I think it's absolutely disgraceful.

Mr Gerretsen: It's unfortunate this matter has taken the turn it has. As you know, many of us are from local government and in local government we pride ourselves on the fact that we deal with problems the way they're presented to us and we try to find a solution. It's perhaps unfortunate that we, as a Legislature or as a committee, don't get involved in enough policy matters like we have an opportunity to do here. I would have thought this would be a situation that could be fairly easily resolved.

For Mr Parker to somehow suggest, "The problem was resolved in this case by the minister getting the money somewhere," that's exactly what this motion is addressing. This motion isn't saying the Ministry of Health should pay; it's saying the Ministry of Health should ensure that the appropriate financial assistance be made available. Whether it's through private sources like Easter Seals, whether it's through other service clubs, whether it's through other ministries, somebody should be advocating on behalf of those people who don't have access to these programs. That's what it's all about: access. It's all right to say, "We've got a program out there," and whether or

not it's mandated by the Canada Health Act is totally immaterial.

The government of Ontario decided 10 years ago, 12 years ago, that this was a program it wanted to get involved in, and it has been adopted, I assume, by every government since then. Now the question is, do we want to make that accessible to as many people or not? If the person gets the money from some other source or can make their own way down to the interview centre, obviously they should pay for it. Nobody is going to deny that. Somebody over there talked about generous travel allowances. Who has said anything about generous travel allowances? We're talking about the actual cost of a person being able to access this particular program. That's all we're talking about.

If the money can be found somewhere else, fine, but let somebody advocate on behalf of them. We're saying the Ministry of Health are the people who should be able to do it. They've got the knowledge. They've got the resources. They know where the money can be made available. For a member to say, "It's not a money issue," it's a money issue to the person who cannot access a particular program. It's a money issue to them or else they wouldn't be applying for it, they wouldn't have gone to see the Ombudsman about it. Sure it's a money issue to them. If they had the money in their pocket, they wouldn't be going through all these steps. They'd get on the bus or on the train or what have you and go to one of these centres. Access in principle has been denied if a person cannot get there because of a financial lack in order to get there.

About drawing the line, yes, I draw a line here: that for everybody who has a right to a particular program, that program should be made accessible to them. If they don't have the financial means to get there, then somebody ought to step in and help them get those financial means. If it's from the private sector, a private source, more power to them, but if not, then surely the ministry has an obligation to see these people can in effect get the necessary assessments done.

I'm going to ask the government members to take another look at it and see if you can support this resolution, which is a very general resolution.

Mr Len Wood: I hope the government members would support this resolution as well because it seems there is a clear pattern that's been developing over the last two years plus a few months. Three or four years prior to that, during that whole span, most of the cases citizens had that were brought to the various ministries and to the Ombudsman were resolved with the involvement of the ministries, whether it be the Ministry of Health or other ministries. If it couldn't be resolved there, it was brought to the Premier's attention and mediated, negotiated and resolved. But now it seems there is a pattern being set that the almighty dollar means more than anything else in this province.

Mike Harris has sent out the word clearly: "I'm not going to listen to citizens' complaints. I'm going to use my backbenchers and the Conservative majority I have to brush all these citizens' complaints under the carpet, and

as the complaints come up, we're just going to ignore them. I'm going to close the door. I'm going to go fishing or I'm going to go golfing, and I couldn't care less, unless you're talking about cutting money and giving money to the rich taxpayers in this province, or cutting people off welfare and reducing the amount of money they have."

It seems there's a pattern that has been set over the last two years plus a few months that was not there during the three years prior to June 1995 when this government was elected. I would hope that the Conservative members would finally be able to stand up and say, "Okay, if Mike Harris is not going to do his job, we're going to raise it in caucus and we're going to raise it publicly out there," as some of the backbenchers have done. They've spoken out against what the government is doing and spoken out against what the Premier is doing. That's what it's going to take to get this Premier and the cabinet and the government heading in the right direction and saying that citizens who have complaints should be heard. If they're justified in their complaints, we should find a way of mediating them and dealing with them, rather than having them come to this committee where there is a majority of Conservative members on the committee. Mike Harris is going to get his wish again. He's going to have another complaint swept under the carpet and pretend everything is well in Ontario when everybody knows it's not.

The Chair: Any further comments?

**Mr Preston:** I call the question. **Mr Pettit:** A recorded vote.

The Chair: I would ask members to review the resolution before us: "The Ministry of Health should ensure that appropriate financial assistance is available to applicants of the assistive devices program to offset the cost of their travel to and from program-approved assessment centres, where such assessments are necessary for the purpose of determining their eligibility under the program for high-technology visual aids." It's a very specific resolution.

You've heard the question. I'll call the vote. This is a recorded vote.

#### Ayes

Agostino, Gerretsen, Len Wood.

#### Nays

Ford, Parker, Pettit, Preston.

The Chair: The motion is defeated.

There is one other item on the agenda but I don't think the committee has time to consider it, so I'd ask the clerk to schedule a committee meeting some time next week.

The committee adjourned at 1231.

#### **CONTENTS**

#### Wednesday 1 October 1997

Case of Mr S	B-189
Ms Roberta Jamieson, Ombudsman	
Ministry of Health	
Ms Mary Catherine Lindberg, assistant deputy minister, health insurance	
Mr Gordon Kumagai, acting director, assistive devices program	
Ms Carol Jones, manager, professional services, assistive devices branch	

#### STANDING COMMITTEE ON THE OMBUDSMAN

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Vice-Chair / Vice-Président
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Mr Dominic Agostino (Hamilton East / -Est L)
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Mr Bill Vankoughnet (Frontenac-Addington PC)
Mr Len Wood (Cochrane North / -Nord ND)

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Clerk / Greffière Ms Tonia Grannum

Staff / Personnel

Mr Philip Kaye, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 8 October 1997

Standing committee on the Ombudsman

Case of Mr H

# Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 8 octobre 1997

Comité permanent de l'ombudsman

L'affaire M. H



Président : John O'Toole Greffière : Tonia Grannum

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 8 October 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 8 octobre 1997

The committee met at 1009 in room 151.

#### CASE OF MR H

Consideration of the Ombudsman's case report in the matter of Mr H and the Ministry of Finance.

The Chair (Mr John O'Toole): I call the meeting to order. Just for the record, we would like the Liberal Party to be here and we'll certainly wait before we have any final decision to make sure they're here. But for the sake of other people's schedules, we have before us a report of the standing committee with respect to the matter of Mr H and the Ministry of Finance. Our researcher, Philip, has prepared a report. Does everyone have a copy? Then I will ask Philip to lead us through the report. The intention is to send it to the House.

Mr Philip Kaye: The Ombudsman's case report in the matter of Mr H and the Ministry of Finance is the third case report, or so-called recommendation-denied case, to be discussed in this committee since last November. In drafting the report on Mr H's case for the committee's consideration, I have followed the format adopted by the committee in its reports on the other two cases; that is, I first set the context for Mr H's complaint, which is Ontario's system for the collection of tobacco tax. Next, the draft explains the nature of Mr H's complaint to the Ombudsman, followed by the positions of the Ombudsman and the Ministry of Finance regarding his case, and the draft ends with the committee's decision on whether to support the Ombudsman.

The background section of the draft on page 1 notes that tobacco tax is collected from consumers by retailers who pay the tax to designated tobacco wholesalers for remittance to the ministry. Two categories of consumers do not have to pay the tax: members of first nations who purchase tobacco on a reserve for their exclusive use and diplomats resident in Ontario who acquire the tobacco also for their exclusive use. The tax-exempt cigarette stock is unmarked. Instead of a yellow tear-strip, there is a clear tear-strip.

An allocation system for the sale of unmarked cigarettes on reserves has been created to ensure that first nations consumers receive the tax exemption but that all others pay the tax. There are two levels of allocation: First, an annual quantity of cartons of unmarked cigarettes is allocated to a reserve; then, depending on the circumstances, either a band council or the Ministry of Finance

may allocate this annual quantity among each reserve retailer.

Under the allocation system suppliers/wholesalers must hold permits to deal in unmarked cigarettes and are responsible for ensuring that retailers do not purchase cigarettes in excess of their allocation. This allocation system has been implemented on 33 of Ontario's 117 reserves.

Since 1992 all new dealers in unmarked cigarettes have been required by the Ministry of Finance to post security of \$500,000. Statutory authority for this requirement is found in section 12 of the Tobacco Tax Act. This section provides that the Minister of Finance may demand minimum security of \$500,000 from every applicant for or holder of a permit to deal in unmarked cigarettes. Section 12 also authorizes the minister to increase or decrease the security requirement.

Mr H's complaint to the Ombudsman is outlined at the bottom of page 2. It is pointed out that Mr H is a member of a first nation who lives on a reserve. He intended to start a business wholesaling unmarked cigarettes to first nations merchants on reserves. He was unable to post the \$500,000 bond as he did not have sufficient assets off the reserve to serve as collateral. He could not rely upon his assets on the reserve as, under the federal Indian Act, such assets cannot be pledged or seized except in favour or at the instance of an Indian as defined in that act or band. The relevant provision is subsection 89(1) of the Indian Act, and that is reproduced at the top of page 3.

Mr H considers the ministry's bond requirement to be unreasonable as he intends to sell tax-exempt cigarettes only and therefore would never be holding any revenue in trust for the ministry.

The Ombudsman's position in this case highlighted what she considered to be the inequitable treatment of Mr H. In particular, she concluded that treating people who lived on reserves and who were bound by the Indian Act in the same way as those living off reserves was inequitable, and that, in the case of Mr H, such treatment was improperly discriminatory. She felt it was sometimes necessary to treat people differently to provide access to the same outcome.

The Ombudsman further concluded that the ministry's practice of requiring \$500,000 security bonds constituted systemic discrimination. It meant, in effect, that no first nation individual living on a reserve and whose assets

were solely on the reserve was able to obtain an unmarked cigarette dealer's permit.

The Ombudsman pointed out that the Tobacco Tax Act gave the Minister of Finance the flexibility to decide whether to require security or to set it at a level lower than what was generally required. Also, the legislation permitted conditions to be attached to the issuance of permits to deal in unmarked cigarettes. These options would be available under her formal recommendation, which appears on the middle of page 4, and that formal recommendation reads: "The Ministry of Finance reconsider Mr H's application for a wholesale dealer's permit and an unmarked cigarette dealer's permit."

With respect to the issue of tax liability, the Ombudsman explained that Mr H intended to sell unmarked cigarettes only to first nations merchants within the limits established by the quota system. In these circumstances provincial taxes would not normally be collected. She said that the bond rate for Mr H might reflect that situation and accordingly be set at zero.

The Ombudsman also referred to a ministry suggestion that tax liability might arise as a result of theft, fire or inventory accounting problems. Her response included the possibility of the ministry placing conditions on the permits issued to Mr H to reduce the risk of loss from these contingencies.

In terms of the issue of potential unlawful activity, such as sales beyond amounts specified by the allocation system or to unauthorized first nations retailers, the Ombudsman answered that any potential unlawful activity would appear to be a normal enforcement matter to be handled by the ministry and law enforcement authorities. The ministry had the option of attaching conditions to a permit granted to Mr H to address its concerns.

It was also the Ombudsman's opinion that the integrity of the marketplace was not protected by a practice which resulted in systemic discrimination. She did not believe that Mr H's case was about allowing him to gain an advantage over others; rather it was about levelling the playing field so that he could enter the marketplace on an equal footing with persons who were not subject to the Indian Act.

In terms of the role of the Indian Act, she contended that the ministry could not abdicate its responsibility to administer the Tobacco Tax Act fairly and equitably by simply leaving it to the federal government to act in this matter. She pointed to the discretion which already existed under the Tobacco Tax Act which, she said, allowed the ministry to devise an equitable solution to Mr H's situation.

There were some other matters raised by the Ombudsman. The fact that other members of first nations had inquired into wholesaling unmarked cigarettes without complaining about the security requirement did not mean that Mr H's case lacked merit. She said as well that the ministry's concern about a proliferation of wholesalers resulting from a security exemption for Mr H should not be a factor. If people were eligible for permits, then they ought to obtain them.

1020

The position of the Ministry of Finance is outlined in the draft beginning on page 6. The ministry's position held that a minimum \$500,000 security requirement for new dealers in unmarked cigarettes was essential if all applicants were to be treated in a consistently fair manner and if the integrity of the tobacco tax system was to be maintained. It saw the granting of an exemption to Mr H as giving him an unfair business advantage over those who had posted and maintained the \$500,000 in security. If there was to be a level playing field, with the integrity of the marketplace preserved, there had to be no exemptions.

The ministry did not agree that its treatment of Mr H was improperly discriminatory nor that its policy constituted systemic discrimination. It explained that a requirement for security, applied consistently and equally to all people wishing to engage in the wholesaling of cigarettes, was necessary for reasons of tax administration. It was the most economical and practical way to administer the tobacco tax system and the best way to prevent the erosion of tax revenues.

The ministry stated that any discrimination arising in this case did so as a result of a federal statute, the Indian Act, over which it had no control.

In terms of tax revenues, the ministry described its security requirements as helping it to fulfil an important responsibility, safeguarding the province's revenues in this regard.

The ministry listed five ways in which tax revenue could be lost to the province, even by a dealer in unmarked cigarettes who sold only to first nations retailers on reserves: Sales could be made to retailers above quantities specified by the allocation system; sales could be made to unauthorized retailers; sales could be made to retailers on reserves which were not under the allocation system, but in quantities so large that the intended diversion of the unmarked cigarettes to the taxable market was unquestionable; poor record-keeping could make it virtually impossible to determine whether the eventual consumer was entitled to the tax exemption; and thefts and unaccounted-for sales could conceal the diversion of unmarked cigarettes to the taxable market.

The ministry explained that without security it had no recourse against a dealer in unmarked cigarettes who permitted abuse of the tax exemption for first nations consumers. But with security it could assess the dealer for the tax associated with any significant amount of unaccounted-for, unmarked stock. A security requirement could also act to deter unlawful activity by dealers in the first place.

When it comes to the role of the Indian Act, the ministry commented that Mr H's case raised questions regarding the role of that act which could only be addressed by the federal government. As mentioned earlier, the ministry pointed to the Indian Act as the source of any discrimination arising in this case.

The ministry was also concerned that if Mr H were to be exempted from the security requirements, the result might well be a proliferation of wholesalers, with serious implications for the costs of administration and the risk of revenue losses. Further inquiries had been made by other first nations people interested in wholesaling unmarked cigarettes who had not objected to the security requirement.

The ministry further pointed out that the attachment of conditions to a permit should not be viewed as an alternative to the posting of security; rather security was necessary as a means of enforcing the conditions.

The draft ends with a statement as to the committee's decision and that statement reads: "After considering the submissions of the Ombudsman and the Ministry of Finance, the committee has decided not to support the Ombudsman's recommendation."

The Chair: Thank you very much. I open the floor to any members of the committee if they have any points or questions for Philip.

Mr Len Wood (Cochrane North): Is this the substance of what would be submitted to the Legislature?

Mr Kaye: Yes, it is and, as I said at the beginning, this is the format that the committee adopted with the other two case reports or recommendation-denied cases that came forward to this committee, that the committee reviews the positions of the Ombudsman and the governmental organization and then states its decision. This would be the actual format of the report.

The Chair: That's really what this meeting is today, to agree on this report or disagree and again present the — Mr Parker.

Mr John L. Parker (York East): Just to be clear, as I understand it, we are not here to discuss the merits of the decision. The decision is a matter of history at this point. We're here to discuss whether this report, as drafted by Philip, accurately reflects the proceedings and the decision. Am I right in that?

The Chair: Precisely.

**Mr Parker:** So we're really here in judgement of Philip, not in judgement of the case.

The Chair: I'd like to thank Philip because I think the report is a complete recapturing of the essence of that discussion and the arguments put forward. Anyone else?

Mr Dominic Agostino (Hamilton East): I wasn't here for the previous discussion, but certainly I respect the independence and the professionalism of the legislative research department and our staff here who provide information. I was not privy to the actual meeting itself, but I have a great deal of faith in the staff who pull this together, the legislative researcher.

The Chair: Perhaps the clerk or the researcher could tell us who the members were. The members who attended that meeting will be listed, by the way, in the final committee report to the House.

Mr Trevor Pettit (Hamilton Mountain): That being the case, Chair, I move that the report be adopted and that you as the Chair be authorized to present the report to the House.

The Chair: Motion by Mr Pettit.

Mr Agostino: Just to get a clarification, by presenting it we are not necessarily suggesting we agree with the

contents, in the sense of the decision. All we are suggesting is that the report itself accurately reflects the meeting that took place. I just want to clarify that that is really what we're voting on, not whether we agree or disagree with the decision in front of us.

The Chair: That's right.

Mr Pettit: That decision is already made.

The Chair: We have a motion before us. Any other questions or comments? Being none, I'll call the question. Those in support? It's carried unanimously.

No other business for this meeting?

Mr Len Wood: Chair, I just would like to make the committee aware of a serious situation that is developing with the restrictions that have been put on the Ombudsman's budget, the 20% reduction. We're now seeing the effect of that where the northeastern Ontario office will be closed as of Thursday. During its closure period, one staff is going to be laid off.

Mr Pettit: What office?

Mr Len Wood: The office in Timmins, which will mean that temporarily they will have to go to Sault Ste Marie, which is about 400 miles away. Some of them will be referred to Sudbury and, in the long run, I guess, over a period of the next few months, the services that were being given in Timmins will end up in Thunder Bay. I just wanted to raise that with the committee because I understand that a press release will be coming out today or tomorrow to that effect.

Mr Agostino: Just a question to follow up on the concerns that Mr Wood has expressed: Would there be merit in asking the Ombudsman to come in front of the committee and explain to us what impact these cuts are having on her ability to carry out her job as Ombudsman in Ontario? I think that would make a better insight for all of us to understand what this is doing and what benefits or negatives there are to the changes that have occurred. I'd be happy to move that we ask the Ombudsman to appear before the committee to give us an overview of the impact the budget cuts may be having on her ability to carry out the job of Ombudsman of Ontario.

The Chair: We have a motion before us. Any questions or comments on Mr Agostino's suggestion that we request the Ombudsman to appear before us and respond to the request for budget cuts, and the implications?

Mr Len Wood: I agree with it. I think it would be a good suggestion. I can recall, I guess it's less than a year ago that we had a partial discussion on what the effects of downsizing and a cut in her budget would mean. I know we don't have any control over that, but —

The Chair: That's a very good point, Mr Wood. I would refer us to the special report that was just submitted which more or less examined whether the Ombudsman should review the budget with this committee. I think that was one of the concerns, was it not, in that special report?

Mr Kaye: Right.

The Chair: It has never really been formally recognized that this committee has any role with the office with respect to budgets. I'm not trying to confound the issue here but that is rather controversial, how much actual

input this committee has with respect to her budget or the role of the budget.

1030

Mr Douglas B. Ford (Etobicoke-Humber): If we're going to review that, I'd like to see the last three-to-five-year operating budgets that this Ombudsman has had, her office, and we could check on that and see why the reduction and if it's feasible to operate that office with a 20% reduction. It's only good business sense to find out what has happened previously.

The Chair: Clerk, would it constitute a huge problem if we had just the final statement page on the Ombudsman's budget? There must be a year-over-year over the

last five years showing —

Clerk of the Committee (Ms Tonia Grannum): I could put that as a request to the Ombudsman and see if she would respond.

The Chair: If she's interested in attending.

Mr Pettit: Does this indeed come under our jurisdiction? If it doesn't, I would propose that the clerk or someone —

The Chair: We have a motion before us now. Mr Agostino has a motion.

Mr Pettit: But it may be academic, could it not?

The Chair: Perhaps we could ask a question of the researcher to clarify if this is in fact consistent with the role of this committee.

Mr Kaye: There are two issues. When it comes to the estimates of the Ombudsman's office, this has been a controversial issue where the committee has recommended that it be given authority to review the estimates of the office. The Ombudsman opposes that, favouring a continuing role for the Board of Internal Economy. On the other hand, under the existing standing orders the committee does have the responsibility to review the annual report of the Ombudsman, where she, in her most recent annual report, does make reference to the effects of the budget cuts. In terms of the committee's existing authority to review the annual report, there is an opportunity to look at budgetary matters, but when it comes to formal authority over the estimates process, it does not currently have that power.

The Chair: We have a motion before us by Mr Agostino requesting the presence of the Ombudsman. Any further comments?

Mr Agostino: I'll just follow up on Mr Ford's point. Any of those questions obviously could be asked as well.

Mr Ford: I'd rather have the financial reports than have the person here, and we can review those reports and make a determination on those reports. If there are any deficiencies in those reports, then we could have the person here at that time.

The Chair: It's a fair request and the clerk has made it clear that she will, in speaking with the Ombudsman's office, make that point.

Mr Parker: I am not enthusiastic about pursuing a meeting for the purpose of examining only one particular aspect of the financial situation affecting the Ombudsman. If we are to go down this path, I think it would be fair for

this committee to do a thorough examination of the Ombudsman's budget and that would, as Mr Ford suggests, involve a thorough analysis of budgets over the course of some years to give us the context to understand the suggestion that is currently being made about changes to the current year's budget.

I don't think it's useful to anyone to look into one particular element of that picture without the whole picture available for scrutiny and analysis and context. If what is suggested is a thorough analysis of the Ombudsman's budget, I am open to suggestions along those lines. If what is suggested is an inquiry into one particular aspect, then I'm less enthusiastic in supporting the request.

This whole issue of the Ombudsman's budget was considered at length by this committee over the course of the last — what is it, Len? — five years of the committee as currently constituted. I guess we've just gone through a change, so not the currently constituted committee but the committee as constituted a couple of weeks ago and dating back to 1992 under the previous government, when the Ombudsman committee of the Legislature conducted a series of inquiries and discussions regarding the rules affecting the conduct of the Ombudsman's office and the relationship between the Ombudsman's office and this committee.

As you suggested in your comments, Mr Chairman, that resulted in a report that was tabled before the Legislature this fall containing a series of recommendations, some of which touched on this very subject we're discussing now. That is merely a report of the committee. It has not been adopted by the House, it has not been debated by the House, and none of the recommendations in that report has followed any further course in terms of rule changes or amendments to legislation or regulations or anything of that sort.

But this committee as a body has spoken unanimously on the subject and, on this particular aspect, the point made in the report has been a wish for greater openness, greater accountability, greater opportunity to inquire into financial and budgetary matters in respect of the Ombudsman's office. If the suggestion is to act on that recommendation and to pursue questions of that sort, then I think that is consistent with the view that the committee has expressed in the past and I would not want to stand in the way of that. But if it is merely to look at one question without looking at the broader context, then I can't support the motion.

The Chair: Very good. I just want to be clear. If I could have the clerk read back what the motion said, I think that would answer some of our questions.

Clerk of the Committee: Mr Agostino moved that we request that the Ombudsman appear before the committee to discuss her current budget in regard to budget cuts.

**Mr Agostino:** Basically the impact on her ability to do the job.

The Chair: Do you wish to respond to Mr Parker's point? What he's suggesting is, if we're going to look at the budget, if you look very narrowly at just the method of implementing the reductions, would we as a committee

like to examine options, whether to close a field office or conduct business in another way, through video, whatever? That could become very free-ranging. If we only, as Mr Parker is suggesting, restrict it to these are the actions taken because of the reduction —

Mr Agostino: What I'm concerned about is the ability of this office to operate under its budget restrictions. Frankly, we don't have the power to change. I understand that. I'm not suggesting we be given that power. But certainly as a committee where the Ombudsman deals with us, I think we have a responsibility if the Ombudsman comes forward and says: "Here's what I'm limited to doing. Here's what I can and what I can't do."

While the Ombudsman is here, the members of this committee have many opportunities to ask all the questions they want about previous budgets and so on. That's part of the whole thing obviously and it's not going to be limited to simply this year's budget. If someone says, "What was your budget five years ago and what did you do with it?" that's a fair question that the person should answer.

What I'm concerned about is what Mr Wood has suggested. Some of the concern we have heard is that we may be limiting the ability of what is really an independent office to do the job that the office is legislated to do. I think there is some flexibility and the background report from the staff could address many of Mr Ford's points as well as it's submitted to us when the Ombudsman is here.

Mr Parker: Rather than haggle it out here, I'm going to suggest that this matter be referred to the subcommittee to consider as a point of further business to bring before the committee. Maybe in that context all the wrinkles could be worked out and the various angles considered.

The Chair: Procedurally then, Mr Parker, we would have to withdraw the motion or vote it down and it could be ordered as business for the subcommittee.

Mr Parker: I'm happy either way.

The Chair: I'm going to call the question on the motion that has been read, which is to summon the Ombudsman to discuss the impacts of budget reductions. All those in support? Those opposed? That's defeated.

**Mr Parker:** Could I suggest that the question be referred to the subcommittee to consider further?

The Chair: I see that as appropriate and I ask the clerk to follow up and call a subcommittee meeting. I'm not sure who the members are, but I'm sure you do. What's convenient would be when we're called back, I gather, in November.

Mr Pettit: Is Mr Parker's suggestion a motion? Do we have to vote on it or is he just suggesting that you refer it to the subcommittee? Does that not have to be presented as a motion also?

The Chair: No, I think it's just directing the clerk to convene a meeting. I would say, though, in summary, it is a very good question. It is a question in the broader context of looking at the special report. I would say, Mr Agostino, if you are your party's rep on the subcommittee, that's a very good report.

Mr Agostino: I was going to ask the clerk if I was.

Clerk of the Committee: I believe we need a motion to replace because we've got new members.

The Chair: Could we do that today?

**Clerk of the Committee:** We could do that today, if you'll just give me five minutes.

The Chair: Okay. I would ask anyway, Dominic, that you be given access to a copy of that because it's a report that goes back, as Mr Parker said, to 1992, and many members — Mr Wood would know too because he has participated in that over a couple of different governments. It was really three governments that wrestled with the existence of this committee and its duties to the House and to the committee process. Mr Wood, perhaps you'd like to comment.

Mr Len Wood: I wanted to raise that as a matter of information. When there's more information available — and we're not going to be able to meet on subcommittee probably till the middle of November. By that time, there might be more information available on the justification for why the Timmins office was closed compared to one in Sudbury, Sault Ste Marie, Thunder Bay or any other community, the number of cases that are there, the whole broad picture. I just wanted to raise the fact that that is —

The Chair: It's a very appropriate question.

Mr Len Wood: For me or anyone on the committee to say to her at this point in time, "You must keep the office in Timmins open and close some other office or lay off some other staff instead to meet your budget reductions," I think would be very inappropriate because I don't have all the information about it.

The Chair: I'm going to leave it with the clerk that we convene a meeting in November and she'll determine at that time who the members of the committee are. That'll be a good starting point.

Mr Pettit: I think she knows.
The Chair: You're for your party.
Mr Len Wood: I'm probably the one.

The Chair: Yes.

Mr Len Wood: It's not only that reduction I disagree with. I disagree with the fewer politicians, the fewer school boards and the fewer municipal politicians. There are a lot of reductions out there.

Mr Parker: That's why you're over there and we're over here.

The Chair: That's a fair comment, though.

Mr Pettit: I'd like to move that the membership on the subcommittee be amended by substituting Mr Agostino for Mr Hoy and Mr Wood for Mr Marchese. I believe that you, Chair, and Mr Parker are already members and so would remain.

The Chair: Yes.

**Mr Pettit:** That would make up the new subcommittee, so that's what I'm moving.

The Chair: Moved by Mr Pettit that these are the new members of the subcommittee. All those in support? That's carried unanimously.

Thank you very much. We'll see you in November.

The committee adjourned at 1043.

#### **CONTENTS**

#### Wednesday 8 October 1997

Case of Mr H	3-21	1
--------------	------	---

#### STANDING COMMITTEE ON THE OMBUDSMAN

### Chair / Président Mr John O'Toole (Durham East / -Est PC)

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Mr Trevor Pettit (Hamilton Mountain PC)

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# Legislative Assembly of Ontario

First Session, 36th Parliament

# Official Report of Debates (Hansard)

Wednesday 26 November 1997

## Standing committee on the Ombudsman

Election of Chair

Subcommittee membership

Case of Mr S

Chair: Marcel Beaubien Clerk: Tonia Grannum

# Assemblée législative de l'Ontario

Première session, 36e législature

## Journal des débats (Hansard)

Mercredi 26 novembre 1997

## Comité permanent de l'ombudsman

Élection du Président

Membres du sous-comité

L'affaire M. S

Président : Marcel Beaubien Greffière : Tonia Grannum

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#### LEGISLATIVE ASSEMBLY OF ONTARIO

### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 26 November 1997

#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 26 novembre 1997

The committee met at 1011 in room 151.

#### **ELECTION OF CHAIR**

Clerk of the Committee (Ms Tonia Grannum): Honourable members, it is my duty to call on you to elect a Chair. Are there any nominations?

Mr Trevor Pettit (Hamilton Mountain): I nominate Mr Marcel Beaubien for Chair of the Ombudsman committee.

Clerk of the Committee: Any further nominations?

Mr John Gerretsen (Kingston and The Islands): May I nominate someone else? I'll nominate Mr Pettit, unless he declines.

Mr Pettit: While I appreciate the nomination by Mr Gerretsen, I will in fact decline.

Mr Gerretsen: I'll nominate Mr Vankoughnet.

Clerk of the Committee: Do you accept?

Mr Bill Vankoughnet (Frontenac-Addington): I thank my colleague from Kingston and The Islands but I've already committed myself to the nominee here, who I think can do the job. Thank you very much, Mr Gerretsen.

Mr Gerretsen: There being no further nominations — Clerk of the Committee: Seeing no further nominations, I declare the nominations closed and Mr Marcel Beaubien elected as Chair.

The Chair (Mr Marcel Beaubien): Good morning, everyone, and thank you very much for your overwhelming support, and Mr Gerretsen, it certainly applies to you. I'm certainly happy to be here this morning.

The first order of business this morning is that we'll need a motion that the membership of the subcommittee on committee business be amended by substituting the Chair for Mr O'Toole.

#### SUBCOMMITTEE MEMBERSHIP

Mr Pettit: I move that the membership in the subcommittee on committee business be amended by substituting Mr Marcel Beaubien for Mr O'Toole.

The Chair: You've heard the motion. Is there any discussion on the motion? If not, all those in favour? The motion is carried.

Mr Gerretsen: On a point of order, Mr Chair: I want you to clearly understand that just because I moved two other members to chair this illustrious committee, that doesn't take anything away from the fact that I have the

highest regard for you and I know you will chair this committee in a very good fashion and I have full confidence in you as Chair of this committee.

The Chair: Thank you very much.

The next order of business for the committee's information is that the subcommittee will be made up of Mr John Parker, Dominic Agostino, Mr Len Wood and Marcel Beaubien.

#### CASE OF MR S

The Chair: The next order of business will be the consideration of the draft report by Mr Kaye.

Mr Philip Kaye: The Ombudsman's case report in the matter of Mr S and the Ministry of Health is the second case report or so-called recommendation-denied case to be examined by this committee since September.

In drafting the report on Mr S's case for the committee's consideration, I have adhered to the format adopted by the committee when reporting on recommendation-denied cases. The draft begins with an outline of the context of Mr S's complaint, which is the Ministry of Health's assistive devices program. That context also includes to a lesser degree northern health travel grants, which were referred to by both the Ombudsman and the ministry.

The paper next explains the nature of Mr S's complaint to the Ombudsman, followed by the positions of the Ombudsman and the Ministry of Health regarding his case.

The conclusion contains the committee's decision reached on October 1 whether or not to support the Ombudsman.

Beginning on page 1 of the draft report, it's noted that Mr S's complaint related to the operation of the assistive devices program, or ADP, which is administered by the Ministry of Health.

In February of this year the Deputy Minister of Health defined the objectives of the program. The statement by the deputy minister appears towards the bottom of page 1. It reads:

"...to financially assist Ontario residents with longterm physical disabilities to obtain basic, personalized assistive devices appropriate for the individual's needs and essential for independent living. Devices covered by the programs are intended to give people increased independence and control over their lives. The devices allow them to avoid costly institutional settings and remain in a community living arrangement."

Any Ontario resident who has a physical disability of six months or longer and a valid health card is eligible to participate in the program. Residents are eligible whatevertheir incomes.

Assistance can assume various forms. In some cases the program pays up to 75% of the cost of devices. In other cases it contributes a fixed amount. With respect to yet other items, ADP pays an annual grant directly to the person involved.

The program has 127,000 clients and an annual budget of \$80 million. During 1996-97 close to one third of all applicants were required to undergo an assessment at an assistive devices assessment centre.

As mentioned earlier, both the submissions of the Ombudsman and the Ministry of Health made reference to northern health travel grants. These grants help to pay the transportation costs of northern Ontario residents who must travel long distances for medical care. Grants total 30.5 cents per kilometre based on the one-way travelling distance between the patient's home and the nearest appropriate specialist or health care facility.

Mr John L. Parker (York East): Excuse me. I wonder if I might just intervene. We've all received a copy of the report. Some of us are a little slower than others at reviewing it. I've just reviewed it myself. Frankly, I don't need the benefit of Mr Kaye's review of the report. I'm open to comments from my colleagues whether they need it, but I'm wondering whether we can just dispense with the reading of the report and vote on it.

The Chair: Go to the discussion and question period: Is that what you're suggesting?

**Mr Parker:** Just go straight to a vote. I'm satisfied to proceed without any further discussion.

Mr Gerretsen: Maybe Mr Kaye can shorten the summary of the report to some extent, but I think there may be people out there, particularly the ones who are watching on television, who may want to get a better idea of what's going on here. The only way they can do so, since they don't have the benefit of reading the report beforehand, is to have the matter explained to them. I don't think it should take all that long.

The Chair: Any other comments from the committee members?

Mr Allan K. McLean (Simcoe East): If he could just summarize it, that would be appropriate. I think Mr Gerretsen is right. There are viewers who are wondering what this report is. I sit sometimes and watch and I'm wondering what they're talking about and I haven't a clue. I think the viewers have a right to have an overview. I think just an overview and the conclusion of it would be appropriate.

The Chair: I'll ask Mr Kaye to continue with his report, but I'll leave it up to him if he feels he can summarize it or condense it a little bit. I'll leave it up to you, Mr Kaye.

Mr Kaye: Thank you very much. What I will do is summarize the nature of the complaint and then highlight

the key argument of the Ombudsman and the key argument raised by the ministry.

With respect to the complaint itself, Mr S sought funding from the ADP for the cost of a high-technology, sightenhancement device. He was first required to attend at an ADP-approved assessment centre to determine which device would best meet his needs. Mr S, however, lived in Ottawa and the nearest centre which performed this kind of assessment was in Toronto. He complained to the Ombudsman's office that by denying him financial assistance to cover the cost of travel to Toronto, the ministry was denying him access to the program.

Mr S subsequently did receive assistance for a low-technology device, although the Ombudsman reported that he still preferred high-technology vision assistance.

1020

The Ombudsman's principal concern in the case held that the financial assistance provided by the program was not universally available if the funding could not be accessed because of economic and geographic considerations. Such considerations related to the affordability of the costs of travel and the capacity to travel that were particularly acute for persons with disabilities. For instance, the Ombudsman pointed out that in 1990 the average income for Ontario residents with disabilities was 28% less than for those without disabilities.

From the perspective of the Ministry of Health a key argument dealt with the issue of precedent and costs. The ministry was especially concerned about the possible precedent which would be set by a departure from its policy not to pay travel costs with the exception of northern health travel grants. One of its comments in this regard said that Ontario residents currently know they have to travel to centres of excellence such as the Princess Margaret Hospital for cancer treatment or the Hospital for Sick Children for specialized paediatric care. Such services raise the following issue: If the ministry pays for travel for high-technology vision aids, why should it not then pay for travel for other health services?

The ministry concluded that if it were required to pay for travel for specialized health care services, the costs would be high and an unreasonable burden would be placed on the existing health care budget.

The committee's conclusion is found at the bottom of page 8. There is a typo. The reference to "Ministry of Finance" should state "Ministry of Health." The committee's decision reads: After considering the submissions of the Ombudsman and the Ministry of Health, the committee has decided not to support the Ombudsman's recommendation

The Chair: Thank you, Mr Kaye. I'll entertain comments and questions. Mr Gerretsen, I'll give you the floor if you want to start.

Mr Gerretsen: It so happens I was here on that particular day. I can remember this being discussed quite extensively and the representations that were made by the Ombudsman at that time. What it basically boils down to is whether we feel that, in order for this program to be accessible to all people, it would include —

Mr Parker: Mr Chair, excuse me, we're not here to debate the merits of the case. We've done that. We've heard the case. We've debated the case and we've ruled on the case. We are here to consider the report that has been submitted by Philip as a summary of the case, and to satisfy ourselves that it accurately reflects the issues of the case and the decision that was made.

We're not here to rehash the issues of the case. I'd like to keep this discussion focused to the task that's in front of us here today, which is to discuss the report, not to discuss the case.

The Chair: Mr Parker, I would tend to agree with you, but I am a new Chairperson here today and I have not had the opportunity — I don't say that we should rehash the whole case, but I don't think Mr Gerretsen's opening statements are unreasonable. I think I will hear what he has to say at this point in time.

Mr Gerretsen: If you're asking me whether the report truly reflects what happened here that day, quite frankly, I don't think it does. There were a number of members who were here, present that day, who indicated, for example — and it may have been placed in a minority position, which is not stated in the case at all from Mr Kaye's summary of it. They felt that for a program to be accessible, not only does the program itself have to be accessible but also the ability of the person to access the program, which in this case meant the ability of the person to travel to these centres in order to be adjudicated or to be assessed as to whether they are eligible for these kinds of devices.

It's my understanding that is made tougher because a lot of these — if memory serves me correctly, a number of assessment centres have in fact been closed and so it would require these people to travel a much further distance than was the case previously.

What I'm saying is that if it's the committee's feeling that this report accurately reflects not only the decision of the case — the decision of the case, presumably, is one line and that is that the committee does not uphold the Ombudsman's position in the matter. But if you want the entire report to reflect what happened here on that particular day, this report doesn't do it because it doesn't state the concern that was not only expressed by myself but by other members as well, to the effect that for the program to be accessible, the ability to get to the place to be assessed is a part of the accessibility issue.

Mr McLean: I have one paragraph I'd like to read. It says:

"The ministry indicates that if it receives a complaint respecting the inability to access an assessment centre, it works with the individual involved to find a mechanism which will provide access. These mechanisms include Easter Seals and service clubs, such as Rotary. In addition, if the person in question has little income, social assistance under the Ministry of Community and Social Services may pay a special travel grant. Such sources as the local hospital or persons who work in local long-term care might also be contacted for help in finding travel assistance."

That paragraph to me really says it all, that there is help there. My understanding is this individual is from Ottawa, who didn't qualify for the northern grants; therefore, there were other ways to do it. In my opinion, that is the main reason the committee did not accept the Ombudsman's recommendation, because there are other ways there and the ministry is there to be involved and to help. That to me satisfies.

Mr Gerretsen: If I might just respond to that, I think Mr McLean has put his finger right on it. It says, "The Ministry of Community and Social Services may pay a special travel grant" and other sources "might also be contacted for help in finding travel assistance."

The point of the matter is, and it was discussed here that day, certainly other organizations like Rotary clubs and other service clubs may be approached and sometimes assistance is available from those organizations, but what happens if the ministry decides not to fund — I'm talking about Comsoc — if a service club is not in a position to give funding? Is a person in effect being denied the ability to get to one of these assessment centres if there is no other possible funding available?

I think what the Ombudsman is talking about is building in some sort of guarantee that if all of these other funding mechanisms cannot be accessed, then can the funding not come out of the program itself in order for the person to get there.

Mr Douglas B. Ford (Etobicoke-Humber): You need a social worker or somebody to investigate this person or persons, whatever it is, to see if they are capable or if they are physically fit, or all these variables, to see if they are able to communicate with the Rotary clubs or these other people. If they are and they haven't done anything about it, then, quite honestly, they have to be satisfied with what the government has assisted them with. I know of cases where people complain verbally but never do a darn thing about accessing some of the services available locally.

The Chair: At this point in time I think I'll entertain a motion.

**Mr Parker:** I move that the report be adopted and that the Chair be authorized to present the report to the House.

**The Chair:** Discussion on the motion? If not, all those in favour of the motion? Opposed?

**Mr Gerretsen:** I'm opposed and I'd like it to be recorded. I want a recorded vote.

#### Aves

Ford, McLean, Parker, Pettit, Vankoughnet.

#### Nays

Gerretsen.

The Chair: The motion is carried.

I would like to thank all the committee members and the staff. We are now adjourned.

The committee adjourned at 1030.

#### **CONTENTS**

#### Wednesday 26 November 1997

Election of Chair	B-217
Subcommittee membership	B-217
Case of Mr S	B-217

#### STANDING COMMITTEE ON THE OMBUDSMAN

### Chair / Président Mr Marcel Beaubien (Lambton PC)

Vice-Chair / Vice-Président Mr Trevor Pettit (Hamilton Mountain PC)

Mr Dominic Agostino (Hamilton East / -Est L)
Mr Marcel Beaubien (Lambton PC)
Mr Douglas B. Ford (Etobicoke-Humber PC)
Mr Allan K. McLean (Simcoe East / -Est PC)
Mr John L. Parker (York East / -Est PC)
Mr Trevor Pettit (Hamilton Mountain PC)
Mrs Sandra Pupatello (Windsor-Sandwich L)
Mr Bill Vankoughnet (Frontenac-Addington PC)
Mr Len Wood (Cochrane North / -Nord ND)

Substitutions / Membres remplaçants
Mr John Gerretsen (Kingston and The Islands / Kingston et Les Îles L)

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B-1

B-1

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Second Session, 36th Parliament

# Assemblée législative de l'Ontario

Deuxième session, 36e législature

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Wednesday 6 May 1998

Standing committee on the Ombudsman

Organization

## Journal des débats (Hansard)

Mercredi 6 mai 1998

Comité permanent de l'ombudsman

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Président : Marcel Beaubien

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#### ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

#### STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 6 May 1998

#### COMITÉ PERMANENT DE L'OMBUDSMAN

Mercredi 6 mai 1998

The committee met at 1004 in room 151.

#### ELECTION OF CHAIR

Clerk of the Committee (Mr Tom Prins): Good morning. Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

Mr E.J. Douglas Rollins (Quinte): I'd like to nominate Marcel Beaubien.

Clerk of the Committee: Are there any further nominations? There being none, I declare the nominations closed and Mr Beaubien elected Chair.

The Chair (Mr Marcel Beaubien): Good morning, everyone. Thank you for your overwhelming support.

Mrs Sandra Pupatello (Windsor-Sandwich): "Thank you for the \$10,000 raise," is what you meant to say.

The Chair: You attach a financial stipend to everything, don't you?

Mrs Pupatello: I believe you've done that.

#### **ELECTION OF VICE-CHAIR**

The Chair: Now we'll proceed to elect the Vice-Chair. Are there any nominations?

Mr Rollins: I nominate Trevor Pettit.

Mrs Pupatello: Do you have to be present to be nominated?

Mr Rollins: No.

The Chair: Mr Rollins has nominated Trevor Pettit. Are there any further nominations? If there are none, then I'll declare the nominations closed. All those in favour of having Mr Pettit as the Vice-Chair? That's carried.

#### APPOINTMENT OF SUBCOMMITTEE

The Chair: The next order of business is to elect a subcommittee. Do we have a motion to elect a subcommittee?

Mr Tom Froese (St Catharines-Brock): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: the Chair as chair, Mrs Helen Johns, Mr Agostino, Mr Len Wood, and that substitution be permitted on the subcommittee.

The Chair: Is there any discussion on the motion? If not, all those in favour? Those opposed? The motion is carried.

The last item of business is other business. Any discussion or any concerns?

Mrs Pupatello: What is the standard meeting procedure for this meeting? Do you meet monthly on Thursdays, typically? It hasn't been standard in meeting that often, I don't think. Is it on Thursdays all the time?

The Chair: Usually it's on Wednesday mornings.

Mrs Pupatello: Monthly?

The Chair: Depending on the business at hand. It's my understanding that the committee has not met that often in the past number of years. I think we'll just have to play it by ear and see what happens. Is that satisfactory?

If there's no further discussion, we're now adjourned.

The committee adjourned at 1008.

#### **CONTENTS**

#### Wednesday 6 May 1998

Election of Chair	B-1
Election of Vice-Chair	B-1
Appointment of subcommittee	B-1

#### STANDING COMMITTEE ON THE OMBUDSMAN

#### Chair / Président

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3000







